



CONSTITUENT ASSEMBLY OF PAKISTAN

DEBATES

Wednesday, the 4th October, 1950

OFFICIAL REPORT

CONTENTS

	Page
Election of Members to the Standing Finance Committee	59
Nomination of Panel of Chairmen	59
The Government of India (Seventh Amendment) Bill— <i>Adopted</i>	59—60
The Pakistan (Provisional Constitution) Order (Amendment) Bill— <i>Adopted</i>	60—61
The Pakistan Citizenship Bill— <i>Introduced</i>	61
Interim Report of the Committee on Fundamental Rights and on Matters relating to Minorities— <i>Consideration continued</i>	61—123

Printed and published by the Manager,
Governor-General's Press and Publications, Pakistan, Karachi : 1950

Price : Annas 5.

CONSTITUENT ASSEMBLY OF PAKISTAN

Wednesday, the 4th October, 1950

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Eleven of the Clock, Mr. President (The Honourable Mr Tamizuddin Khan) in the Chair.

ELECTION OF MEMBERS TO THE STANDING FINANCE COMMITTEE

Mr. President : I have to inform the House that up to 4 P.M. on Monday, the 2nd October, 1950, the time fixed for receiving nominations for the Finance Committee, for the financial year 1950-51, nominations in respect of the following candidates were received, namely :

- (1) Begum Jahan Ara Shah Nawaz,
- (2) Mr. M. A. Khuhro,
- (3) Mr. Bhabesh Chandra Nandy,
- (4) Dr. Mahmud Husain, and
- (5) Mr. Serajul Islam.

Subsequently Mr. Serajul Islam withdrew his candidature. As the number of remaining candidates is equal to the number of vacancies, I declare Begum Jahan Ara Shah Nawaz, Mr. M. A. Khuhro, Mr. Bhabesh Chandra Nandy and Dr. Mahmud Husain duly elected to the Finance Committee.

NOMINATION OF PANEL OF CHAIRMEN

Mr. President : I have also to inform the House that under the provision of Rule 12 of the Constituent Assembly Rules, I nominate the following Members on the Panel of Chairmen :

- (1) Mr. Ghulam Bhik Nairang.
- (2) Moulana Mohammad Akram Khan.
- (3) The Honourable Mr. Abdul Hamid.
- (4) Shri Sris Chandra Chattopadhyaya.

THE GOVERNMENT OF INDIA (SEVENTH AMENDMENT) BILL

The Honourable Mr. Liaquat Ali Khan (East Bengal : Muslim) : Sir, I beg to move :

“ That the Bill further to amend the Government of India Act, 1935 (Insertion of new Section 123) be taken into consideration.”

Sir, it is a very simple Bill. The reasons for its enactment are fully stated in the Statement of Objects and Reasons. As the Honourable Members already know, under the old Government of India Act—when I say old Government of India Act, I mean before it was adapted for Pakistan—there was a section which provided for the administration of the Tribal Areas which were not parts of any Province. Since Pakistan, the people of the Tribal Areas have, by formal agreements, made themselves a part of Pakistan and as such it is necessary to make similar arrangement as existed before for the administration of these areas. It is intended that those Tribal Areas which are not parts of any Province, should be administered by the Governor-General through his Agents and it is proposed that the Governor-General may be given powers to appoint any Governor of an adjacent Province to act as his Agent in so far as the administration of the Tribal Areas is concerned.

Mr. President : The question is :

“ That the Bill further to amend the Government of India Act, 1935 (Insertion of new Section 123) be taken into consideration.”

The motion was adopted.

Clause 2 was added to the Bill.

Dr. Mahmud Husain (East Bengal : Muslim) : Sir, I beg to move :

“ That for sub-clause (1) of clause 1 of the Bill, the following be substituted, namely :

‘ (1) This Act may be called the Government of India (Seventh Amendment) Act, 1950.’”

Mr. President : The question is :

“ That for sub-clause (1) of clause 1 of the Bill, the following be substituted, namely :

‘ (1) This Act may be called the Government of India (Seventh Amendment) Act, 1950.’”

The motion was adopted.

Mr. President : The question is :

“ That clause 1, as amended, stand part of the Bill.”

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Mr. Liaquat Ali Khan : Sir, I move :

“ That the Bill, as amended, be passed.”

Mr. President : The question is :

“ That the Bill, as amended, be passed.”

The motion was adopted.

THE PAKISTAN (PROVISIONAL CONSTITUTION) ORDER
(AMENDMENT) BILL

The Honourable Pirzada Abdus Sattar Abdur Rahman (Sind : Muslim) : Sir, I beg to introduce the Bill to amend the Pakistan (Provisional Constitution) Order, 1947.

(after a pause.)

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I beg to move :

“ That the Bill to amend the Pakistan (Provisional Constitution) Order, 1947, be taken into consideration.”

Sir, this is a simple Bill and has become necessary in order to provide for the appointment of officers from the Assam Government, who opted to serve in East Bengal. This was not provided originally because at the time when West Bengal officers opted for East Bengal and East Punjab officers opted for West Punjab, the question of Sylhet had not yet been decided by referendum and, therefore, no provision was made in the original order. Officers, therefore, from Assam Government, who opted for East Bengal, were actually taken into Government service, but there is not yet any basis for their appointment and this, Bill, Sir, has been introduced in order to provide provision for that purpose.

Mr. President : Motion moved :

“ That the Bill to amend the Pakistan (Provisional Constitution) Order, 1947, be taken into consideration.”

Shri Dharendra Nath Dutta (East Bengal : General) : On a point of information, Sir.

I want to ask from the Honourable Minister that officers who had been working in Eastern Bengal, how are they acting up to now ?

The Honourable Pirzada Abdus Sattar Abdur Rahman : They have been taken into the appointment in East Bengal and this is just to regularise that and provide a basis for that purpose. That is what I have explained.

Mr. President : The question is :

“That the Bill to amend the Pakistan (Provisional Constitution) Order, 1947, be taken into consideration.”

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I beg to move :

“That the Bill be passed.”

Mr. President : The question is :

“That the Bill be passed.”

The motion was adopted.

THE PAKISTAN CITIZENSHIP BILL

The Honourable Khwaja Shahabuddin (East Bengal : Muslim) : Sir, I beg to introduce the Bill to provide for Pakistan Citizenship.

THE INTERIM REPORT OF THE COMMITTEE ON FUNDAMENTAL RIGHTS AND ON MATTERS RELATING TO MINORITIES

The Honourable Mr. Liaquat Ali Khan (East Bengal : Muslim) : Sir, may I, with your permission, move the motion regarding the Interim Report* of the Committee on Fundamental Rights and on Matters relating to Minorities.

Mr. President : Yes. In fact, that is the next item.

The Honourable Mr. Liaquat Ali Khan : Sir, I beg to move :

“That the Interim Report of the Committee on Fundamental Rights and on Matters relating to Minorities be taken into consideration.”

Sir, as the House is aware, one of the earliest steps towards the making of the Constitution that was taken by the Constituent Assembly was the appointment of this Committee. The task before the Committee was to recommend fundamental rights for the citizens of Pakistan in general and rights for the minorities in particular. The Committee, quite naturally, decided to split up into two sub-committees corresponding to the two main branches of its work. The Sub-Committee on Fundamental Rights finished its labours early and placed its report in the hands of the main Committee who, in its turn, finalized it. This is the report which has been placed before the Constituent Assembly and is now under consideration.

The Report consists of three parts : Part I deals with Citizenship, Part II with Fundamental Rights proper, and Part III with the Directive Principles of State Policy.

The clause on citizenship defines the term “citizen” in general terms so as to cover the bulk of the population of Pakistan and leaves further details to be worked out by the Legislature. Citizenship is obviously a subject which requires detailed legislation and the matter is separately receiving the attention of this House.

The Fundamental Rights as laid down in the Report are quite comprehensive. Within a few clauses all the essential rights have been provided. Yet these are neither of such abstract and unreal a nature as not to possess legal effect of any kind nor do they impose far-reaching and embarrassing

*Printed as Appendix II to the C.A.P. Debates, No. 1, Vol. VIII, dated the 28th September, 1950.

[The Hon. Mr. Liaquat Ali Khan]

limitations upon the law-making capacity of the future legislatures by creating a situation in which a large number of laws may be declared *ultra vires* of the Constitution. The Committee have chosen to adopt a *via media* and I think that was the right thing to do.

The Directive Principles of State Policy relates to untouchability. Untouchability being inconsistent with human dignity, its practice is declared unlawful. I trust this declaration will be welcomed by all reasonable people and this will prove to be a great boon to those unfortunate citizens of our country who for centuries past have been the victims of untouchability.

Sir, it is not the first time that Fundamental Rights are being incorporated in a Constitution. Fundamental Rights have a long history and many modern constitutions contain in imposing array of these rights. One need only mention Amendments I-X, XIII to XV and XIX to the Constitution of the U.S.A., Articles 4, 31, 44, 45, 49, 50, 55 to 58, 60 and 65 of the Swiss Constitution, Articles 109 to 160 of Germany's Weimer Constitution. England has no written Constitution, but Magna Charta, the Petition of Rights and the Bill of Rights which occupy a special place in the British Constitution guarantee certain fundamental rights to the citizens. Broadly speaking, the Fundamental Rights relate to equality before the law, freedom of speech, freedom of worship, freedom of assembly, freedom of association, security of person and security of property. Within certain limits these rights are enjoyed by the citizens of all true democratic States.

The whole edifice of these Fundamental Rights is based upon one single idea—the dignity of man—which is inconceivable without freedom and equality. Long before modern constitutions came into being, Islam championed the cause of freedom and equality. Indeed Islam's greatest contribution to political thought was the idea of the equality of all men. Islam did not recognise any distinction based upon race, colour or birth and condemned these false gods in unequivocal terms. Islam thus brought about a revolutionary change in the outlook of men and became the precursor of modern democratic and liberal movements.

It is only in the fitness of things that the constitution of Pakistan should provide for those rights which are essential for human dignity. In fact, we have no option in the matter. Our Constitution is to be framed in the light of the Objectives Resolution, which has already laid down the principal Fundamental Rights to be enjoyed by the citizens of Pakistan. In this Report all that has been done is to elaborate upon those rights.

Towards the end, Sir, I would like to make one observation to which I attach some importance. In presenting this Report the idea is to get the general approval of the House to what is contained therein. Once the House generally approves of the report, with or without amendments, it will be the task of the Draftsman to put its contents in legal form. I would, therefore, suggest that Honourable Members need not concern themselves very much with purely verbal improvements. As long as the meaning is clear, we may leave it to the Draftsman to write it in words he considers best. In any case, the whole Constitution would finally be considered by this House clause by clause and Honourable Members will then have an opportunity to examine every word of it.

Mr. President : Motion moved :

“That the Interim Report of the Committee on Fundamental Rights and on Matters relating to Minorities be taken into consideration.”

Shri Dharendra Nath Dutta (East Bengal : General) : Mr. President, Sir, may I draw your attention to one fact before the consideration of the report begins. I want to inform you that all the amendments that were tabled on the 2nd of June have not yet been printed. I am told that these amendments have been sent to the Press. I am not definite whether all the 400 amendments have been sent to the Press. In any case, they have not yet been received

from the Press. So far as I am concerned, I can tell you that there are certain amendments of mine which have not been printed. I, therefore, leave it to you whether the consideration of the report can be taken up in these circumstances.

Mr. President : Are you referring to the amendments to the provisions of the report of the Basic Principles Committee?

Shri Dharendra Nath Dutta : I know that the amendments regarding the Basic Principles Committee's Report have not been printed; but I am not referring to it. I am referring to the amendments which have been tabled to the report of the Committee on Fundamental Rights and on Matters relating to Minorities.

Mr. President : For the time being, let us consider this motion. The thing you are referring to will come at a later stage and we shall then consider whether the House will be handicapped on account of the non-printing of any amendments. It is being found out whether some amendments have not been printed.

Mr. Bhabesh Chandra Nandy (East Bengal : General) : I beg to move : "That the consideration of the motion be postponed till the presentation of the Report of the Minority Sub-Committee."

You know, Sir, that by a Resolution of the Constituent Assembly here a Committee was formed to advise on Fundamental Rights of Citizens of Pakistan and on Matters relating to Minorities. This Committee appointed two Sub-Committees for convenience of work. One of the two Sub-Committees was to report separately on Fundamental Rights and the other on Minority Rights. Now this Fundamental Rights Sub-Committee has made a report to the full Committee and after full consideration of that report the full Committee has submitted a report. Now my contention is this that this full Committee was appointed with the object of presenting to the House a complete report so that the Honourable Members here might have a full picture of the entire situation. Now this Sub-Committee dealing with Minority rights has not yet completed its report and you know, Sir, that in consideration of this fact the report of the Fundamental Rights Sub-Committee could not be considered by this full Committee. They had to postpone it more than once and had been waiting for the Minority Rights Sub-Committee Report to come. They could understand that because these two subjects were closely allied, unless they got the complete report and gave considerations to it and co-ordinated it the picture could not be complete. So my submission is this, Sir, that in consideration of the fact that the Committee has not come forward with a complete report—it has only given a part report, that is the report on the Fundamental Rights only and has nothing to say about the other side, that is the Minority Right which is closely allied to this subject—we should postpone its consideration at this stage. Unless these two subjects are co-ordinated together and presented to us as one complete report we cannot reasonably have a full picture. That is my point.

I know, Sir, that Constitution is a thing which cannot be had by simply assembling some subjects. There must be a central theme running all through the Constitution and on this theme the whole structure of the Constitution should be constructed. The reports of so many Committees should form a sort of basic point on which the drafting by the Draftsman will proceed. Now, Sir, unless we get these things together, unless we get the picture in its entirety, naturally enough we cannot know really the fundamental and basic points on which the Draftsmen will draft the Constitution. It will be like the blind men in the story feeling the elephant which they could not know by feeling it by different parts. Similarly, without getting a full picture we cannot reasonably visualize the shape the Constitution is going to have. We can only have academic discussion on this point because we know this report is nothing novel; it is just like the provisions about Fundamental Right, etc.

[Mr. Bhabesh Chandra Nandy]

made in the different constitutions of the world. So if we have to fit in these things in the entire Constitution, we must know the other pictures too, particularly the Report on the Minority Rights, which is so closely associated with these Fundamental Rights.

Sir, I know that as people are getting impatient; they want to have a constitution very quickly and I am also one of them. I also want that the Constitution should be framed as quickly as possible and I must point out with all emphasis here, Sir, that I bring this motion for the postponement of the discussion with the definite object of expediting the framing of the Constitution. It may appear a paradox but my point is this, Sir, that if the basic points on which the entire Constitution will be drafted are discussed and thoroughly scrutinized and well-co-ordinated then the draft Constitution when drafted and presented to the House will be passed more quickly and expeditiously than we can generally expect. So, I believe, Sir, that for expediting the Constitution we can postpone the discussion of this part-report of the Committee at this stage. We should wait for the report of the other Committee to come in and then we can take up the complete report together, discuss it and then the task of drafting the Constitution can proceed.

I know, Sir, Government may have hesitation in postponing it because they have to satisfy the impatience of the public but Government must know what really means economy of time. Postponement of this discussion just now will ultimately mean saving of much time because in that case the draft Constitution can pass more easily with less of retouching and redrafting. And furthermore, unless all these basic points are presented to the Draftsman the drafting cannot really begin. So I believe by proposing the postponement of the consideration of the report now, I am not standing in the way of expediting the framing of the Constitution; rather I am helping it.

With these few words I bring this motion for the consideration of the House.

Mr. President : Motion moved :

"That consideration of the motion be postponed till the presentation of the Report of the Minority Sub-Committee."

Mr. M. A. Khuhro (Sind : Muslim) : I rise to oppose the amendment. The Constituent Assembly more than 30 months ago appointed this Fundamental Rights Committee. The Fundamental Rights Committee, when it met, appointed two Sub-committees, one of which, to which my honourable friend, has made a reference, was with respect to Minority Rights. Now that Committee by itself has taken more than 18 to 20 months and in such a long time has not been able to send any report. This very objection was considered when the Fundamental Rights Committee met : whether we should delay this report for the simple reason that Minorities Committee has not chosen to send its report yet. I think, Sir, there is no valid or strong reason for postponing the consideration of this report. Already people have been talking that the Pakistan State was established about three years ago and no steps have been seriously taken to frame the Constitution. Now, people are accusing the Constituent Assembly as such : that they do not seriously mean to frame the Constitution, and under the circumstances I think this motion is very wrong that my honourable friend on the other side has moved that the consideration of the report should be further postponed and "postponed" will be for another six months because there is no likelihood of the Constituent Assembly meeting again till January or February next year. And then you have got the Budget and various other legislative measures and Constituent Assembly, as such, for framing the Constitution cannot possibly meet till sometime in April next year. Are we going to wait indefinitely because the minorities Sub-Committee do not choose to send their report and after all this report of the main Committee on Fundamental Rights has covered almost the entire field and what more is required to be added for the

purpose of minorities. The minorities, rights to my mind have been more or less covered by this report. And then, Sir, there are various amendments to the report of this Committee ; they will be considered on the floor of this House, at the proper time and the Honourable Members on the Opposition side have tabled various amendments to this report. That shows that they have very carefully considered the report and its implications and I think the House should have full opportunity to discuss the report as it is presented and also the amendments that are moved by the various sections of this Honourable House. In that, all these points with respect to minorities will come under consideration and all reasonable amendments can be considered by the House dispassionately.

I think, Sir, no time should be lost and after the House gets through this report the Drafting Committee will consider it and after the Drafting Committee has prepared the Constitution then there will be a meeting of this House to consider that report and if there is anything missing with respect to the minority rights then that could be embodied in the report or in the Constitution itself at that stage and that will be the proper and appropriate stage at which it could be considered. I think, Sir, this amendment, if it is carried, will create misunderstanding in the country and people will think that the Constituent Assembly is adopting dilatory tactics and do not want to get through the Constitution.

I, therefore, would request my honourable friend to withdraw the amendment as it is absolutely unnecessary. The Minorities Sub-Committee's report when it comes hereafter can be considered independently by the Fundamental Rights Committee as a whole or by the House as such but the last opportunity will be when the question will be placed before the House for final consideration. The amendment, to my mind, is absolutely unnecessary, unealled for and should be opposed.

*Shri Dharendra Nath Dutta : Mr. President, I had a motion in my name similar to the motion that has been moved by my friend, Mr. Bhabesh Chandra Nandy, but I rise to support the motion that has been moved by him. Of course we have been accused that by this motion we are trying to delay the process of constitution-making. But, Sir, if we read the report carefully that has been submitted by the Committee on Fundamental Rights of Citizens of Pakistan and on Matters Relating to Minorities, you will find that this committee was appointed by the Constituent Assembly of Pakistan by a resolution on the 12th August, 1947. Evidently as it was a committee on the Fundamental Rights of Citizens of Pakistan and on Matters relating to Minorities, at that time, it was thought that matters relating to minorities have got something to do with the Fundamental Rights and these two matters are allied subjects otherwise there would have been two committees on this subject. But there is only one committee, i. e. on the Fundamental Rights of Citizens of Pakistan and on matters relating to Minorities. Therefore, Sir, at that time that is on 12th August, 1947, when the matters were entrusted to this committee these two things were considered to be allied.

Then, Sir, the Committee was appointed on the 12th August, 1947, and the first meeting was held on the 26th of May, 1948, i. e. about one year after the Committee was appointed. There was a decision to appoint two separate sub-committees to deal with the matters relating to fundamental rights of the citizens of Pakistan and matters relating to minorities. Thus the two sub-committees were decided upon. Then it appears the Sub-committee on Fundamental Rights submitted its report on the 26th of June, 1948 i. e. they submitted a report within a month after the first sitting but the consideration of the report was postponed. The Committee decided that the consideration of the report be postponed till such time as the report of the Sub-committee on Matters relating to Minorities was ready for consideration. Evidently the Committee then considered that the matters were allied and therefore the consideration was postponed. It appears that the Sub-committee on Fundamental

*Speech not corrected by the Honourable Member.

[Shri Dharendra Nath Dutta]

Rights submitted its further report on the 17th June, 1949, *i. e.* one year after the first report was submitted. I am now trying to draw the attention of the House to the period that has already passed so that they may realize as to with whom the responsibility for delay lies. In that meeting it was decided that the consideration of the report should be postponed till the report of the Minorities Sub-Committee was considered. Therefore on the 17th June, 1949, it was still considered that the matters are allied and therefore should be considered side by side. Then the Committee again met on the 8th or 9th September, 1950. Mr. President you will find that previous to that the Committee met on the 17th June, 1949, and then it appears that it met again on the 8th or 9th September, 1950, more than a year later and at that time the Committee on Matters relating to Minorities did not submit its report. We do not know as to how many times the Sub-committee on Matters relating to Minorities did meet. Why did they not submit their report and not only the Members of the minority community are Members of the Sub-committee but the Government Members or the members of the majority community, I am told, Sir are in a majority in the Committee. So, Sir, I do not know why this Committee relating to Minorities did not submit its report but the fact remains from the present report itself that the Sub-committee on Matters relating to the Fundamental Rights and the Sub-committee on Matters relating to Minorities were considered to be allied committees and the subject assigned to them allied matters.

So far as minorities are concerned, we want our political safeguards, our social and economic safeguards to be placed before the House and determined. We are anxious more for political safeguards and I do not know whether on account of that the Sub-committee on Matters relating to Minorities did not submit its report as they do not want to consider the political safeguards of the minorities and these safeguards could not be considered. It cannot be contended with any amount of force that today if we want postponement of the report we are delaying its consideration as it is clear that since August, 1947, these two matters were treated as allied subjects and the postponement of consideration of these reports was allied but today we are asked to pass the report of the Fundamental Rights Sub-Committee, which only covers a part of the work of the full committee. Today we want that the Sub-committee relating to Minorities should submit its report without much delay. The delay that has already occurred is too much. This Sub-committee was constituted in the year 1948 and two years have elapsed now. During this long period of two years this Sub-committee has not submitted its report and surely for that no blame can be attached to us but today without knowing the Minorities Rights Report, *i. e.* the political safeguards that the minorities are going to have we cannot consider this Fundamental Rights Report. My friend, Mr. Nandy, has only moved that the consideration should be postponed in order that the Sub-committee on Matters relating to Minorities should also submit its report in the mean time. It is important matter and in the course of a fortnight this matter can be considered. It can come before the Constituent Assembly in the month of December when it can be made to meet, for the purpose of framing the constitution. I want that during this short period this Sub-committee on Matters relating to Minorities may sit and submit its report in the course of a fortnight. Therefore we really do not want to delay but we are anxious that the constitution-making should finish as early as possible and placed before the House. Our object is not to delay but rather to expedite. Therefore, I submit that the consideration should be postponed and further it seems to me that these reports have come in the shape of *interim* reports. I was listening to the speech made by the Honourable Prime Minister that we should not care about the language because it has come in the shape of a report and it will again come in the shape of draft. But I appeal to you and appeal to the House that if we consider the report and do not change the language now at the time of the consideration of report this may prejudice the consideration of the matters when they will come in the shape of draft constitution.

It may be contended then that there has been a decision by the House on one matter and it cannot be further considered. When it comes in the shape of draft, then we may consider not only the matter contained in the draft but also we may consider the language. But if we come to a decision in the shape of a report and then we consider the draft, I am quite sure questions will arise that really in this particular matter there has been a decision by the House and that it cannot be considered again at the time of the consideration of the draft. So I was just submitting this House that the whole matter should come in the shape of a draft. After the Report has been submitted, it will go to the draftsman and the whole matter shall come in the shape of a draft, so that we may consider the matter once for all, and this will expedite the framing of the Constitution. With these few words I support the motion that has been moved by my friend, Mr. B. C. Nandy.

*Mian Muhammad Iftikharuddin (Punjab : Muslim) : Mr. President, Sir, I rise to oppose the consideration of this report at this stage. I do not associate myself with the reasons given by the mover of the amendment and the speaker who has just sat down. My reasons for opposing the consideration of this Report are entirely different. Before I come to those reasons, let me make one point absolutely clear that I fully agree with the Honourable Member from Sind who has confessed that there has been delay in the drafting of this Report and in its presentation to the House already by three years. I agree with him and I go further and say that I agree with those members of the public who have suspected during these years that we are delaying the framing of the new Constitution, because we want to make our seats and our future positions secure before we take the risk of framing the Constitution and going to the electorate of the country. I think those suspicions are well founded and our leaders who control this House cannot give any effective or reasonable answer to those charges of the public. So let no one take shelter now if any petition is brought forward against the principles or the Report or the items that they are going to put before us. No one need take shelter that we are hurrying, that we do not want to delay. On the one hand, we should be clear that we have delayed this Constitution unnecessarily and that thereby we have displeased the public and we have in that way really so far not taken upon ourselves the responsibility as conscientious men for framing the constitution. That thing we must admit. On the other hand, even if this Report had been presented to us fifty years later I would have stood up in the same manner and opposed its consideration, because the fact that you have presented this Report after $3\frac{1}{4}$ years does not entitle you to pass now in a hurry wrong laws. This Report should not be considered because it is a bit off the Objectives Resolution. That is my argument for opposing the consideration of this Report.

Sir, you will remember that one of the items of the Objectives Resolution was that in Pakistan State wherein the principles of democracy, freedom equality, tolerance and social justice as enunciated by Islam shall be fully observed and, again, later on, the resolution says : wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice and freedom of thought, expression, belief, worship and association subject to law and public morality. Sir, this Report has altogether nullified these principles and I, therefore, oppose them, because nowhere else in the entire constitution the Objectives Resolution could be more reflected than on the fundamental principles or on the question of fundamental rights. Unless, Sir, all that we have done is to water down the accepted democratic principles of the capitalist world, the difference what I thought at that time and I think the public in general thought at that time between what we proclaimed to be an Islamic Constitution and between what we proclaim the Constitution of this new State which we thought was different

[Mian Muhammad Iftikharuddin]

from the rest of the States of the world, because it was based on moral principles more than any other State. The difference we thought would be that whereas in the other democracies of the world democracy was a sham democracy, it was said that people could act as they liked, but because of the economic conditions and other things in those countries people could not really be free ; we thought that Pakistan would give a Constitution which would create a Democracy in which people could be really free. Sir, all that has been betrayed. How is that people can really be free and how is it that people in countries where democracy or the so-called democracy has been functioning for the last many hundreds of years, people are not yet free ? It is very simple and that is what we thought was the new principle that Pakistan was going to give to the world. May be that others have given that principle, but Pakistan placed that principle on moral principle. We thought that we were going to create such conditions through our Constitution that people would not be under oppression or under the control of anybody. If today a person wants to vote for a particular party or for a particular individual we know very well that the State does not guarantee him livelihood and that fellow working in a factory where he has a cruel and unscrupulous industrialist controlling him or the fellow is working on land where he has a despotic landlord ruling over him, we know very well that unless that person is assured of the fact that if he were to be discharged from his service from that particular factory or from that area, he will have the State to fall back upon who will support him provided he is prepared to work ; unless those conditions are created we should know that there cannot be any democracy and that with the principles that we are proclaiming we are either deceiving ourselves or we are deceiving the people when we say that in the following principles we are really laying the foundation of a new type of democracy. We have, Sir, actually gone even back from what the democracies of the world have up till now accepted. Sir, to mention only one instance, people—no matter what you may say and what speeches you may make—are going to compare your Constitution at least with one country in the world, that is India. Sir, we thought that by having an independent State we could give play to our own objectives, we could give play to our own genius and aspirations. I would suggest to the House, through you, to put before yourself the Constitution of India and the fundamental rights incorporated in the Constitution of that country and the fundamental rights that have been presented to us in this Report. I am ashamed to admit and since it is in black and white the public can see what India has given. I do not approve of the Indian Constitution. I do not approve of the principles laid down in their fundamental rights. Nevertheless, one fact will have to be admitted that the fundamental rights incorporated in the Indian Constitution go far beyond the fundamental rights that we propose to incorporate in our Constitution. In India this fact is agreed that it would be the responsibility of the State to maintain those people who are out of work in accordance with their economic position and this and that. I think that will not go far. We should have gone far beyond. But I am ashamed to admit and the world is going to bring that charge against us that for what purpose did you bring this State into being if you were going to give birth—heaven knows what to call this child of the imagination of our leaders—to a constitution as envisaged in this report on Fundamental Rights. Sir, that is just one comparison that I am making. We boasted that we were going to create a new State. You have only to read these two or three pages to find out that we have not gone to that extent . . .

Mr. President : Mian Sahib ! Have you suggested any improvement by way of amendments ?

Mian Muhammad Iftikharuddin : Yes, Sir. What I am trying to say, Mr. President, is that we should not take up the consideration of this report

because it betrays the fundamental principles on which this report was to be written. Amendments are a small matter. The important thing is the fundamental principles which are betrayed. Therefore, this report should not be considered.

I was going to say—pardon my going back to the same question—that there could be three types of constitutions that Pakistan could frame.

Mr. President : Mian Sahib ! Do not dilate on that question ; confine yourself to Fundamental Rights.

***Mian Muhammad Iftikharuddin :** I say, Sir, that fundamental rights could be of three types. Either they could be of the same type as are accepted in the Western Democracies, namely, England, America. They could, on the other hand, be fundamental rights for the benefit of the people in power. They could also be rights for the benefit of the masses. Now, Sir, had we chosen the middle path, i.e., drafted a report which could compare favourably with India or Western Democracies, we would have said that we had done equally bad. But, Sir, we have gone backward. We have drafted a report in which the main purpose is to ensure that no change can take place to unseat the people who are already in power. Now, Sir, that is a great insult to the Objectives Resolution which we consider sacred and which we so pompously put before the world. The last thing I could not expect of this leadership... because I know that we were going to hypocritical—was to give us a report laying down principles where real democracy would be possible ; people would be economically free ; to exercise their minds, their votes and their conscience in accordance with what they believed in. So, that I could not expect. Therefore, Sir, I think we should not consider this report at this stage. But, on the other hand, I say that no delay need be caused. If we put before ourselves honestly the Objectives Resolution, we should be able to re-write these three or four pages on Fundamental Rights of this Report within the next three days. Since this report is not in accordance with the Objectives Resolution

Mr. President : You have said that already.

***Mian Muhammad Iftikharuddin :** I say this report should be written in accordance with the Objectives Resolution that we passed. Since it has not been based on Objectives Resolution, it should not be considered at this stage.

Shri Kamini Kumar Dutta (East Bengal : General) : Sir, I rise in support of the resolution of Mr. Nandy. The scope of this resolution is a very limited one. He has not opposed the consideration of the whole report—only he has asked for the postponement till the presentation of the report of the Minorities Sub-Committee. So, my first request would be that the House should consider this resolution irrespective of any general observation regarding the whole of the report which might have fallen from any Member of the House. With the whole report Members would deal when it comes up at its proper place. I wish to banish from mind the idea of causing any delay in the formation of the constitution. I know the mind of the Members of our section of the House. We have already said that the formation of constitution should be expedited as far as possible ; but of course it must be consistent with the objective that it must be a healthy constitution.

Sir, the question of minorities in the world now is a very important problem. Though the minor section of the people is called a minority, their problem is not a minor one. Their problem is a very major one and particularly in a democratic State where the minorities require safeguards for their protection in the constitution itself. They are rightly entitled to it. In the olden days if any oppression was committed by a king or by a monarch, it could be remedied. But, if a majority would override the rights of the minorities, there lies no remedy unless the remedy is provided in the constitution itself. It was

* Speech not corrected by the Honourable Member.

[**Shri Kamini Kumar Dutta.**]

for this reason that very rightly one committee was formed on Fundamental Rights of the Citizens of Pakistan and on matters relating to Minorities. Matters relating to minorities are closely interwoven with the question of fundamental rights. Considering that basic principle, very rightly one committee was formed for that purpose. That Committee split up its functions in forming two sub-committees—one on Fundamental Rights of the Citizens of Pakistan and another on Matters relating to Minorities. The Committee did not forget its primary functions. It found that though the Sub-committee formed to consider the question of fundamental rights did submit its report, the Sub-committee dealing with matters relating to minorities had not made its report. Both reports were a necessity. These two problems—fundamental rights, and matters relating to minorities—are inter-linked. Consideration of one would also influence the consideration of the other. It is apparent that in these fundamental rights many of the basic rights of the minorities have been protected. That is bound to be. But in addition to those basic rights the minorities may have special rights to be safeguarded in the constitution.

Mr. President : That we shall consider later on.

Shri Kamini Kumar Dutta : That is exactly to which I am coming. After once the House accepts this report on fundamental rights, and in the consideration of the rights of minorities it appears that some matters which have been dealt with and accepted by the House on fundamental rights, require further expansion, then it may be beyond our capacity to remedy it. So, Sir, the safest course would be to have the report on the Minorities matters also. It is just to safeguard against any contingency arising which may require further reconsideration of the fundamental rights, and reconsideration or the expansion of it in any of the fundamental rights, so that the rights of the minorities may not be jeopardised in any way. The resolution aims at this and it seems to be very reasonable one. It is only with that object that the rights of the minorities who form a component part of the State, may not be negatived or may not be injured in any way. Of course, as has been observed, it will be considered hereafter, but I say it is not improbable that the contingency may arise which would require reconsideration and expansion of the fundamental rights. Bearing these things in mind when the problem or the question of the rights—may be a section of the people of Pakistan—is under consideration, whether it would be proper now to finish and to have a final verdict of the House on the fundamental rights which may at a later stage give rise to any contingency in which the rights of the minorities may not be safeguarded.

So, the resolution is a very modest one. It aims at only this: postponement of the consideration so that both the allied matters may be considered together and the minorities may feel confident that their rights have been fully safeguarded in the Constitution of Pakistan. As I have already said, the problem of minorities is a very important problem and the world has up till now to find a very true solution of the problem and I hope for this State of Pakistan which is based, as it has been very rightly said, on the basis of equality, and as has been said and I agree with that, on the cardinal principle of Islamic equality, we ought to frame a Constitution in which the minorities may think that they have got the best ideal Constitution of the world here and in which the minorities have been given a right place.

The Honourable Mr. Nurul Amin (East Bengal: Muslim): Mr. President, Sir, on the showing of the honourable speakers, the motion for postponement of the consideration of this report, has no legs to stand. It has been admitted that we are guilty of delay, people have become anxious, they are impatient, they are restive, and further delay will certainly cause much more impatience and anxiety amongst the people. It has also been admitted, Sir,

that the rights which have been guaranteed or suggested in this Report, cover most of the rights that the minorities will also enjoy. So, I submit, that unless there is any cogent and reasonable and very strong reason to show that the acceptance of the fundamental rights that have been recommended by the Committee, will prejudice or jeopardise in any way, the rights of the minorities which may be recommended. There is no ground for waiting for the Minority Rights Committee Report. If that cannot be shown, Sir, I do not think that there is any strong reason for the postponement of the consideration of this report. These are only fundamental rights which apply to all the citizens of Pakistan irrespective of minority or majority and in addition to that, there are certain rights which have been especially suggested and recommended for the minorities over and above that. Sir, the House will consider further recommendations of the Minorities Committee when it comes before the House. So, there will be no impediment in adding some more rights to the minorities as and when they will come before the House. So, I would submit, Sir, that the attempt by the Honourable Members on the opposite to delay the matter will have a very adverse reaction on our people and we will be misconstrued and misunderstood and there will be nothing to show how the acceptance of these rights will come in conflict with the grant of further rights to the minorities. We are anxious and willing to grant the rights to the minorities as our Objectives Resolution envisages. So, there will be nothing, which will stand in the way of guaranteeing further rights to the minorities.

The Honourable Member, Mr. Kamini Kumar Dutta, has said that in we accept certain principles here and then we come across with some other rights which will go against the rights already accepted, in that case we will be in a difficult situation. I do not envisage or contemplate any such situation because this is an Interim Report. We are simply giving certain directions to the Drafting Committee or the Drafting Officer, who will come up before the House, Sir, with the draft and when we consider that draft in the form of the Constitution along with the recommendations of the Minority Committee, which will be separately dealt with by this House before it goes to the Draftsman, the whole matter will be open before the House for any change, any modification which may be made, I do not think that fundamental rights can be precluded by mere technical objection. Everybody in this House will agree that even if there is a technical objection, that should not override the guarantee of any fundamental rights to the citizens as a whole or to a particular section of the citizens of this country.

So, Sir, in that view of the matter, I would submit, Sir, that we should go on with the consideration of this Report and wait for the report of the Minorities Committee so that we may add some more rights to the minorities for consideration in due course.

With regard to the accusation on the Committee that they have made the delay and the Committee was appointed on the 12th August, 1947, and they have delayed its sittings for over a year and all these things, Sir, this will again apply to us. We do not want to share the blames which are now shifting on the shoulders of the Members of the Committee or on the shoulders of the Members of this House. We shall also be equally guilty of making delay in this matter.

With regard to the argument advanced by the Honourable Member from the Punjab, Sir, I would submit that as there is no motion to refer this Report back to the Committee, this argument does not apply. Well, the postponement of consideration of this Report does not solve the purpose of the Honourable Member from the Punjab because he differs from the very idea of what has been suggested here. So, if there had been a motion for referring back this report to the Committee with certain directions as contemplated by the Honourable Members, then, Sir, we could consider this argument. It does not appeal to anybody by saying that—even democracy does not suit, the autocracy does not suit, nothing suits us,

[The Honourable Mr. Nurul Amin.]

In the absence of any motion to the effect that this report be referred back to the Committee with certain directions, the argument on which the postponement of the consideration has been supported by the Honourable Member from the Punjab, has no force at all. So, Sir, I submit that the report of the Committee should be taken into consideration and the motion by the Honourable Member, Mr. Nandi, for postponement of the consideration should be withdrawn.

***Sardar Shaukat Hyat Khan** (Punjab : Muslim) : Sir, much publicity was given to the fact that the Committee on Fundamental Rights was in Session. This committee did hold its sittings not for a day or two but for full three years and has now brought out a report. But its contents confirm the truth of the proverb 'a mere mouse out of a mountain'.

Sir, when the Honourable the Prime Minister submitted the report of the Fundamental Rights Committee the people were extremely eager to see what new kind of constitution Mr. Liaquat Ali Khan proposed to present after the labour of three years. They expected that the constitution would neither be of the type of Britain nor of America but would be the same 13 centuries old constitution of ours—the Constitution of Medina.

Mr. President : Are you supporting the amendment of Mr. Nandy ?

Sardar Shaukat Hyat Khan : I am opposing the consideration of the Report.

Mr. President : Then, keep yourself confined to the Fundamental Rights.

***Sardar Shaukat Hyat Khan** : Sir, we have now to see that what this report contains ? What kind of constitution is this ? How far does it embody the principle of real democracy and where lies the difference between this constitution and that given us by the British ?

Mr. President : You forget that this is not the whole Constitution.

***Sardar Shaukat Hyat Khan** : May I know what new things are given us in this report. The Committee which spent three long years in its compilation consisted of many eminent persons. What new things have they evolved ? There seems to be absolutely nothing new. I think that if the constitution of some district board had been taken as a model it would have proved better and so much time would not have been wasted.

Then we are engaging an English man as our draftsman. Our government does not believe that any Pakistani is competent enough to do this job, so an Englishman is being imported to frame our constitution. If this work too had been entrusted to him, I think he would have drafted a better report of fundamental rights.

Mr. President : That is beside the point. Confine yourself to the Fundamental Rights.

***Sardar Shaukat Hyat Khan** : Sir, I want to know what protection and safeguards have been provided therein for the poor. What is there for the illiterate, the unemployed, the aged and the disabled. There is absolutely no provision for them. In a democratic country every citizen has a right to free education, bread and employment. He has a right to get sustenance when out of employment and, if he falls sick, to free medical attendance and treatment. He must be provided with a pension in his old age and supplied all other requisites. All these items should have been included in our new constitution. But what do we see instead. We find that even those rights which we hitherto enjoyed are being taken away from us and thus we are retrogressing. Two gentlemen who spoke before me said that the people were impatient for the constitution, so its passage should no longer be delayed. One of them was from Sind, the Prime Minister or would-be Prime Minister of that Province and the second was the Prime Minister of Bengal.

It is really strange that these gentlemen too have begun to feel for the people, and realise that they are answerable to them. But this impatience, on the part of the people, should not have meant that we should get a report which should under the pretext of making haste be full of defects, ignorance, absurdities and slavish mentality. It should also not mean that we should accept it summarily because our people could not bear delay. The right course for us will be to wait till we get a clear cut and right sort of report. Our Objectives Resolution in accordance with which this report has been drawn up, was passed with high aims and ideals which are not reflected in this Report. Therefore if we return this report even ten times for reconsideration it will be useful. At the time of passing the Objectives Resolution the Prime Minister had told us that there would be no harm if constitution-making took some extra time. Perhaps he has changed his mind today. We are not prepared to let the same noose tightened round our necks under the pretext of haste from which we had to free ourselves after a struggle with the British and other powers. This will not mean freedom if we are freed from one slavery to be subjected to another. We won't suffer the Prime Minister of Bengal, the Chief Minister of Sind or even the Prime Minister of Pakistan to put our neck in the noose of slavery and make us do things which result in our undoing.

Begum Jahan Ara Shah Nawaz (Punjab : Muslim) : Mr. President, Sir, I had no intention whatsoever to take part in this debate, but, after listening to some of the remarks that have fallen from the lips of two of our prominent Punjab Members, I feel that as a Member of this Committee it is my bounden duty to try and explain some of the provisions contained in the report as well as clarify the position under the Objectives Resolution. I wish my honourable young friends had tried to read more and understand the type of the report on Fundamental Rights presented to the House—I hope they will excuse my saying so—because there are two types of fundamental rights under the different constitutions of the world. I say this, Sir, with the greatest emphasis at my command that the report which we have presented to this House is an improvement both on the report of the Indian Constitution as well as of some of the Western democracies such as Britain and America. In support of this I will only point out some of the new provisions in our report which do not exist in the British constitution as well as in the constitution of the United States of America. Unfortunately or fortunately for us my honourable young friends conveniently forgot to mention those provisions and only mentioned those that are not incorporated in the Report.

Now, Sir, do they know or is it for me to tell them that there is no equality of opportunity for everybody in the British Constitution or equal pay for equal work. We have provided these as fundamental rights and tomorrow a woman will not be paid 3 annas when a man will be paid 12 annas as a labourer. There will be equality of opportunity for everybody irrespective of the religion or sex to which that person may belong. Moreover, it is said that we have not guaranteed education and employment. There is no need for us to incorporate these things in the fundamental rights of a Constitution at all that is based on such an Objectives Resolution. The Objectives Resolution specifies all that and this is an Islamic principle which has been enunciated. If social justice is guaranteed under the Objectives Resolution, there is no need to specify such things in the fundamental rights of the Constitution. They will come through Legislature and should not be embodied in the Constitution, Sir, I am surprised to hear such remarks that the Objectives Resolution has been overlooked for these things are already enunciated in the Objectives Resolution which is a part of the Constitution itself. That is my contention and that is what I would like to say on the floor of the House.

[Begum Jahan Ara Shah Nawaz.]

Sir, this is all that I wanted to point out. I do not agree with Mr. Nandy's amendment, because as he knows, it is not the fault of the Fundamental Rights Committee that the report of the Minorities Committee is not before you today. It is due to some of the members of the minorities themselves who wanted that some of the provisions that were to be incorporated in the report should be circulated for eliciting public opinion and other factors connected with their representatives, etc., are responsible for it.

Prof. Raj Kumar Chakraverty (East Bengal : General) : No, Sir.

Begum Jahan Ara Shah Nawaz : Sir, I do not agree with the motion proposed and I do hope that the Report will be taken into consideration now as contrary to what some of my friends have said on the floor of this House, it has been ready for a long time but could not be presented to the House because of the Minorities Committee's Report not being ready. We feel that too much delay has already taken place and the sooner we deal with these basic principles and pass them the better it will be for the citizens of Pakistan to know that as far as the question of their fundamental rights is concerned, the first step in the framing of the Constitution has not been delayed any longer.

Sir, I oppose the motion with these few words.

The Honourable Mr. Abdul Hamid (East Bengal : Muslim) : Sir, the reason for the Honourable Members on the other side of the House moving this amendment is that they want further consideration of the matter and want to consider the report of the Minorities Committee before deciding the matter finally. I think the question of minority rights had been exercising the minds of the minorities all these years. Their representatives know them well. Actually all the fundamental rights of the citizens of Pakistan are embodied in only 15 sections in this report and any addition or alteration they want to make they can make here and now.

I do not think the House will agree to share the responsibility of delay in this matter. If that is done, a hue and cry will be raised that this House is deliberately delaying the framing of the Constitution.

Mian Iftikharuddin said that the Fundamental Rights do not reflect the intention of the Objectives Resolution and I wish Mian Iftikharuddin had specifically mentioned where it has deviated from the Objectives Resolution. Mian Iftikharuddin said that more right has been given in India but again he has not enlightened the House by showing how the Fundamental Rights given in India are better.

Sir, so far as the Minorities Report is concerned it cannot be the guiding factor for these fundamental rights ; rather the fundamental rights will guide the Report of the Minorities Committee.

Sir, I do not think that it is fair that a draft constitution should be prepared and placed before this House according to the report of this Committee and after that the House would reconsider it. Why delay this matter now ? Why should we have two drafts. If you make your decision here and now then one draft may do and that will help the expeditious framing of the Constitution.

Sir, some of the grounds urged in general terms both by Mian Iftikharuddin and Mr. Shaukat Hyat Khan have less reference to the fundamental rights and the provisions made therein than to the report on the Basic Principles and democracy. We are not here considering them. Framing of Constitution of Pakistan will come later. We are concerned only with the Fundamental Rights that are to be incorporated in our Constitution. Can they point out one item out of the 15 articles which they oppose and desire to be omitted ? Sir,

they have failed to make reference to any article of the Fundamental Rights because they know in their heart of heart that they cannot oppose any. In this view of the matter, I would appeal to the members of the minority community not to press the motion for postponement ; rather they should help in improving the report, and this is not a very big report. Eminent lawyers are there and they have got the opinions of vast majority of the minority community, whose minds are seriously exercised over their rights and the Members know full well what they want and what they do not want. They should lend their services to this House in setting right these fundamental rights if they feel they are defective. They have been called from the Constitutions of other democratic countries and there is hardly any reason to think that they are not suitable for Pakistan.

With these few words I oppose the amendment.

***Mr. B. L. Rallia Ram** (Punjab : General) : Sir. I rise to support the proposition that is before the House, namely that the Report of the Committee be taken into consideration. The point that has been raised, or the amendment that has been put forward, is that the report should not be considered unless the report of the Sub-Committee on Minority Rights is also forthcoming. Now, Sir, this amendment was proposed in the Committee itself, but the Committee could not see any really reasonable ground why the matter should be further postponed. As a matter of fact, if the Report of the Fundamental Rights is accepted by this Assembly the working of the Minorities Committee becomes very easy (*hear, hear*), because after all what we want is that all the important rights are included in the fundamental rights. After all it is the fundamental rights which give the citizen the proper security and confidence in the future. Therefore, the view of the Committee was — and rightly so — that everything which is of importance ought to find a place in the Fundamental Rights and, Sir, as a Member of that Committee I may say that all the important points have been covered and therefore the work of the Minorities Committee now is of a very small, technical nature, namely, merely to see if there is any specific right which does not come under the general fundamental rights which needs to be put down in the Constitution. Therefore, Sir, it seems to me that by accepting the Report of the Fundamental Rights Committee we will be really helping the Minorities Committee to shorten their work, to confine themselves to any specific instances which in their opinion are not covered by the Fundamental Rights and there can only be some minor alterations because the main principles have all been embodied. I, therefore, Sir, see no reason why there should be any further delay, why the minorities should not have the assurance that Fundamental Rights have been accepted so that they can go forward in their confidence and assurance that they have what is needed and that therefore they can only put forward a few details which need to be put down in order to meet their point of view.

Mr. M. H. Gazder (Sind : Muslim) : I rise to oppose this amendment for deferring consideration of the report of the Fundamental Rights Committee and, Sir, my grounds are these : the constitution-making has already been delayed for 3½ years and the Constitution should consist of only very few articles of basic importance. We should not sit down and legislate. We need not waste time by saying that this should not be done and that should be done. Three and a half years have nearly gone, Sir. This particular Committee of Minorities Rights has already taken more than three years and these two Committees—the Basic Principles Committee and the Fundamental Rights Committee—have taken more than eighteen months and as the reports before us are only interim reports evidently other reports are coming and we are going to consider them in dribs and drabs.

[Mr. M. H. Gazdar.]

There is no reason for our friends to make us delay the consideration of these reports as they come in because after all the constitution has to be framed. Sir, you know that the constitution of Burma was framed in two months and elections were held within a year. The new Syrian constitution has been framed in one month and we have already taken 3½ years and the people outside are complaining that Honourable Members of this House want to enjoy their office and monopolize power as long as it lasts because they want to delay the framing of the constitution. We do not want to be a party to that sort of move. In fact I will propose that we should sit from day to day and if there is anything which is not yet before the House all those things can come by way of amendments. I am really surprised that our friends on the Congress Benches who were reputed leaders, politicians and lawyers and I have gone through all the amendments and they have not proposed any amendments which would protect rights of minorities. Only if they had desired this to be included today they should have tabled their amendments in this report.

Then, Sir, our friends from the Punjab have said that there is no provision for rights to protect right to work, right to food, right to medicine and right to old age pensions. I find from the amendments given by these very gentlemen that they have tabled amendments to that effect and when they are actually before us why should they want us to delay for six months the consideration of this report. They could mount these amendments if they really wanted these things to be provided here. Then, Sir, one of those members said that we are slaves of the British and we are not proposing that Pakistan should be a republic. Whether what we are or we are not is a different question. I deny this suggestion on their part that we are being ruled by Britishers. But if these gentlemen wanted Pakistan to be a republic an amendment should have been tabled by them which they have not done. Sir people outside are very anxious that this House should dissolve itself and they want that this House should not delay constitution-making any longer. They are very anxious that real people's representatives should come in this House. This House was elected on very different issues and therefore they are anxious that this House should be properly elected by the people on principles which should guide the Government in administering the country. Now it would not be right for any one of us to be a party to the delaying of the constitution and holding of elections even a day longer. I would, therefore, submit and request my honourable friend Mr. Nandy to withdraw this amendment. We are considering reports in dribs and drabs—in fact we have not got final report of any committee and after we pass these reports the constitution is to be drafted and passed again by us, and therefore I think no harm will be done if we withdraw these amendments and allow the various reports to be passed as they come in as that will help us to finish constitution-making as soon as possible.

Prof. Raj Kumar Chakraverty : Sir, I had no intention to participate in the debate today as the points of view of this side have been so ably presented by the previous speakers but certain observations of some of my friends on the other side compel me to take part in this debate. Sir, I note that the Sub-Committee on Fundamental Rights submitted its report on the 17th June, 1949, which was presented to the Committee at its meeting again on 13th April, 1950. The Committee then decided on my motion that the consideration should be postponed until the Report of the Minorities Committee was submitted. This motion of mine was unanimously passed in the committee and members of the majority community who were in the Committee were also present there. They also agreed and the Honourable Prime Minister also agreed to the proposal. I submit, Sir, that there have been no circumstances between then and now which can justify the consideration of the report today on the Fundamental Rights alone without the consideration of the Report on the Minorities Rights. That consideration is even now valid, and on very good ground. That consi-

deration still holds good. No Honourable Member on the other side has controverted that point as yet. Sir, it has been.....

Mr. Serajul Islam (East Bengal : Muslim) : On a point of order. My point of order is that in case of conflict between the provisions of the fundamental rights.....

Mr. President : Does it arise out of the speech of Mr. Chakraverty ?

Mr. Serajul Islam : That is why I want to shorten the protracted controversial discussion. In case of conflict between the provisions of the Fundamental Rights Committee Report and the provisions of the Minorities Report which one will prevail ? To me it appears that the recommendations.....

Mr. President : That is no point of order.

Mr. Serajul Islam : I am sorry, I am not followed.....

Mr. President : Your point has nothing to do with Mr. Chakraverty's speech.

Prof. Raj Kumar Chakraverty : I was saying that the report of the Minorities Sub-Committee has not been ready and it could not be presented to this House so far. But, Sir, I must tell the House clearly that for that delay the members of the minority community in the Minorities Committee are not at all responsible. Various issues had been raised before that Committee and the fact is that the postponement of that committee is due to the fact that the members of the majority community who are members of that Minorities Sub-committee have not yet been able to make up their mind on a very important point, i.e., joint electorates versus separate electorates and that point has held up the matter. Some of them proposed separate electorates as against joint electorates.

Dr. Mahmud Husain (East Bengal : General) : Point of order. Can we discuss the proceeding of the Committee here in this House ?

Mr. President : I am afraid we cannot discuss these.

Prof. Raj Kumar Chakraverty : But, Sir, I must say without going into the details that it were the members of the majority community who are responsible for the delay in the submission of the Report of the Minorities Committee.

Mr. President : That is also a matter which relates to the discussions in that Committee. That also comes within the purview of the discussions in the Committee.

Prof. Raj Kumar Chakraverty : But, Sir, you will kindly permit me at least to clarify the position of the members of the minority community, in that Committee. Begum Shah Nawaz said . . .

Mr. President : That is not the question at all. You are referring to a certain decision of the Fundamental Rights Committee but the same committee later on reversed that decision. You may refer to that but you cannot say what took place in the Minorities Committee and which party took what view are matters which cannot be discussed in this House.

Shri Dharendra Nath Dutta : Begum Shah Nawaz made the Members of the minority community responsible for the delay and she was repudiating that....

Mr. President : I do not think she said so. At least I did not hear her say so.

Shri Dharendra Nath Dutta : She did say so.

Mr. President : You can repudiate the charge, but you cannot go into details.

Begum Jahan Ara Shah Nawaz : I never said that. What I said was, it due to other factors by which I meant Mr. Singha's death and a representative of the Indian Christian community could not be appointed for some time in his place.

Prof. Raj Kumar Chakraverty : Sir, I do not like to go into details. We are all equally responsible for the delay. Whatever may be the case, we should expedite the matter, but one fact that has been raised on this side of the House is that if the Minorities Rights Committee hereafter makes any recommendation which goes against the recommendation of this Fundamental Rights Committee or which militates against their recommendation, then shall we, the Members of this House, be allowed to re-open any question on the provisions of the Fundamental Rights Committee that we shall be passing today or tomorrow. There has been no answer to that question. I submit, Sir, if I know anything of the constitution, once we pass the provisions of the 'Fundamental Rights' as embodied in the Report today before us, it will not be open to us and I do not know, Mr. President, if you will also allow us to re-open any of the provisions passed today or tomorrow. I want a clear-cut answer for that contingency. With these few observations I support the motion for postponement.

Mr. Abdulla-al Mahmood (East Bengal : Muslim) : Sir, I had no intention to make a long speech, but just to say a few words opposing the motion moved by Mr. Nandy, I want to point out to the House that there is no justification for the postponement of the consideration of these fundamental rights. I say so because possibly my friends opposite are thinking that some matters relating to minorities might come up afterwards which may be in conflict with the fundamental rights that we are considering now. Although I do not take the Indian Constitution as ideal, and a model yet I would refer to the fundamental rights which have been incorporated in the Constitution in Part III dealing with sections 12 to 35. I may point out that only section 30 of the Indian Constitution deals with the rights of the minorities. So, Sir, that particular section has already been provided in these fundamental rights.

Sir, I will not take much time of the House, but I will just refer by way of proving that nothing more is needed for incorporation in the fundamental rights. Sections 12 to 35 deal with the fundamental rights in the Indian Constitution and here our Fundamental Rights Report contain the whole thing and over and above that something more has been added. Here in Part I, sections (1) and (2) the clauses that have defined "citizenship" and give powers to make laws incorporated in the Report. They have not been incorporated in the Indian Constitution in clauses 12 and 13. In Part II, in section (1), you will find the same provision although in different language in sections 14 and 21 in the Indian Constitution. In clause (2) in our Fundamental Rights Report you will find the same thing as contained in clause 20. In clause (3) of our Fundamental Rights Report you will find the same thing in the Indian Constitution in clause 32. In our clause (4) you will find the same principle almost in the same language in their Constitution in clause 15. Thus, Sir, I can just analyse the whole thing. Again, in clause (5), you will find the same rights as incorporated in clause 23 of the Indian Constitution. Clause (6) of our fundamental rights and clause 24 of theirs are almost identical. Clause (7) of our Fundamental Rights exactly tallies with the provisions of section 16 of the Indian Constitution. Clause 8 of our Report contains the same provisions as provided in clause 31 of the Indian Constitution. Clause 9 of our Report tallies with what has been incorporated in section 19 of the Indian Constitution. Clause 10 of our Fundamental Rights has provided the same thing, but on a little wider scale than what has been provided in clause 35 of the Indian Constitution. Clause 11 of our Fundamental Rights Committee's Report provides on a much wider scale the principles which have been incorporated in clause 26 of the Indian Constitution. Clause 13 contains the principles regarding religious instructions in educational institutions in our fundamental rights which has been provided in section 30 of Indian Constitution and they are

on a much lesser scale than those provided for in Pakistan. In clause 14 what has been incorporated has also been incorporated in clause 27 of the Indian Constitution. In Part III, clause (i), the portion regarding "un-touchability declared unlawful by law" has been provided in the Indian Constitution in clause 17. Therefore the argument that, as the Report of the Committee on Matters relating to the Minorities has not been before the House, the Fundamental Rights Committee's Report and the Minorities Report being allied cannot be discussed unless the whole thing is before the House; does not stand, because as I have already pointed out section 13 of the Indian Constitution only provides for some rights of the minorities that have already been incorporated. The motion moved by Mr. Nandy, therefore, does not stand.

Shri Sris Chandra Chattopadhyaya (East Bengal : General) : Mr. President, I find that everybody is anxious to have our Constitution drafted as early as possible. In that case, I, as a Member of this House, in my individual capacity, can make one suggestion that if you are really anxious to have this Constitution drafted early, let there be a Drafting Committee and send all the reports of these committees direct to the Drafting Committee to have the Constitution drafted, without bringing it before the House for an *interim* discussion and making our commitments in discussion. This would be the best thing. As soon as these committees finish their work, let them send their reports to the Drafting Committee to have the Constitution drafted and this will, I think, hasten the framing of the Constitution and save waste of time and money by having them considered in this *interim* period by the House several times. That is my submission.

Dr. Ishtiaq Husain Qureshi (East Bengal : Muslim) : Sir, I will, first of all, take up the suggestion made by the last speaker. I wish, Sir, the matter were quite so simple that it were not necessary for this House to discuss the principles first, so that they might be referred to a Drafting Committee. If this Committee does not accept any basic principles, if this House does not give any direction, how is the Drafting Committee to work? Is it the intention of the speaker that the entire constitution should come up finally drafted before this House, and only then it should be considered? If that is the idea, it is absolutely impracticable. It is not possible for any set of drafters who must follow instructions given by the parent body to draft a constitution unless they know what they are going to embody in their draft, therefore, Sir, I am afraid that the suggestion made by my honourable friend, Mr. Sris Chandra Chattopadhyaya, is not feasible.

I will then turn to the arguments advanced generally in support of the amendment which has been put forward by my honourable friend, Mr. Nandy. Sir, it has been said in his amendment that until a large number of reports are in the hands of the members, the question of fundamental rights cannot be discussed. They do not mention any reports specifically. The words are— "reports of such other committees—as the Franchise and the Judiciary Committee", and "such other" is a vague term which embodies any number of committees that might be set up. Is that the intention that all the reports should be in the hands of the Members of this House before they are able to discuss the fundamental rights? I should have thought that the Fundamental Rights Committee's report should be the first to be discussed because we should find out what exactly are the rights of the people so that it may be possible to consider the other report. In any case, Sir, so far as the Minorities Sub-Committee's Report is concerned, and a great deal of emphasis has been laid by my friends in the Opposition on....

Shri Sris Chandra Chattopadhyaya : There is no Opposition here.

Dr. Ishtiaq Husain Qureshi : (East Bengal : Muslim) Great deal of emphasis has been laid by my friends of the Congress party sitting opposite me on the question that the Minorities Sub-Committee's Report is not before us. Now, Sir, I take it that the minorities are a part of the nation and unless it is absolutely clear what are the rights of the citizens of the entire nation, how can we say that these additional and specific rights have to be accorded to the minorities? If the Minorities Sub-Committee's Report had come before us, it would have been like putting the cart before the horse. It would have been absolutely essential in any case even if the two reports were under the consideration of this House together to deal with the fundamental rights first and only then the rights of the minorities could be considered. Actually my friends have made repeated references to the fact that the Fundamental Rights Sub-Committee had made its Report and the general committee waited for the Minorities Sub-Committee's Report to come up for consideration. But the reason that has been supposed to underlie this action has been a little distorted. The reason was not that the fundamental rights could not be discussed until the Minorities Sub-Committee's Report was before the general committee. The reason simply was that it would have been better if the entire report had been put before this House and the necessity of an interim report had not arisen. But for reasons in which I cannot go, even in reply to what has been said by my friend Prof. Chakraverty, it was not possible for the Minorities Sub-Committee to finish its report and therefore it was considered necessary that that part of the report which was ready, should be put before this House.

Now, Sir, I entirely agree with my friend, Mr. Kamini Kumar Datta who says that the question of minorities is an important question. Nobody can gainsay that. It is a very important question. But the importance of the question is by no means minimized by the consideration of the Fundamental Rights here at this stage.

It has been asked what will happen if there is any contradiction between the Minorities Sub-Committee's Report and the principles which may be accepted now by the House on the basis of the Fundamental Rights Committee's Report. That is a hypothetical question, because I do not envisage any contradiction between the rights of the citizens in general and the rights of a section of the citizens of this country. But, supposing for a moment there is such a contradiction, surely it is not beyond human ingenuity or the ingenuity of this House to remove that contradiction because no section of this House would agree to incorporate a contradiction in the constitution.

Then, Sir, I would come to the points made by my honourable friends Mian Iftikharuddin and Sardar Shaukat Hyat Khan.

So far as Mian Iftikharuddin is concerned I will take up his arguments for postponement. He has opposed the motion for the consideration of this report, and the reasons that he has advanced are that fundamental rights, as embodied in this report, are not adequate; are not good enough; are retrograde. Well, Sir, whether that is so or not, that is not a question to be discussed at this stage. I could have met his arguments point by point, but that is not the question. The question at this time is only this, should the report be taken into consideration or not. Mian Iftikharuddin says that the report should not be taken into consideration. May I put this question to him how does he further the cause of fundamental rights by saying that the fundamental rights shall not be discussed in this House—because, mind you, he does not say that the report should be sent back for further amendments. He does not point out the defects in a

resolution or in an amendment. All that he says is this: let this House not consider this report. Well, Sir, I would say that this is by no means a helpful, or for that matter, — a logical position. I wish it were not necessary for me to refer to the quality of this report at this stage but Mian Saheb's remarks cannot be permitted to go unchallenged. He says that the fundamental rights incorporated in the report are not good enough. I would say only this that if Mian Sahib has in his mind a larger number of platitudes which generally are incorporated in the long list of fundamental rights which cannot be enforced by anybody, then perhaps we have been guilty of not indulging in platitudes. We have confined ourselves strictly to justiciable rights. In the matter of fundamental rights there is a sharp division between justiciable and non-justiciable rights. If we incorporate a large number of platitudes from 'A' to 'Z' taken from all the text-books of Marxism, Socialism, Democracy, Liberalism.....

Mian Muhammad Iftikharuddin : And Imperialism :

Dr. Ishtiaq Husain Qureshi : and Imperialism. But for platitudes I would rather look to Marxism than to Imperialism.

Mian Muhammad Iftikharuddin : You would.

Dr. Ishtiaq Husain Qureshi : And so would many others.

However, that is quite a different question. The question is that it is possible to incorporate a large number of platitudes which are not justiciable. I would request Mian Iftikharuddin in the course of the debate that will follow if his report is taken into consideration, to find out a single fundamental right out of the books that he may have studied, which is justifiable and practicable and which is not incorporated in the Report that is before the House. If there are any serious commissions, the Committee could not be infallible, it could not claim to have all the knowledge at its command—it was possible for Mian Iftikharuddin to have sent in his amendments, and I notice that he, in very good company, has sent in a large number of amendments for the purpose of improving, according to his ideas, the quality of this Report. Sir, I cannot help telling a little anecdote of my personal life to be able to illustrate Mian Saheb's point of view at this time. When I was a school boy, I had a friend whose total knowledge of Urdu poetry was confined to ten couplets which he knew by heart. These couplets, he had the great skill of weaving into any essay that he wrote whether in English or in Urdu and whether the subject was philosophical or whether it was absolutely descriptive, these ten couplets were invariably there. When he took his examination and he came back, I said "How have you done"? He said, "My dear friend, I have done admirably. All these ten couplets I have quoted." "But how have you managed to do that, because the topic"—I knew the couplets by now by heart too—"because the subject-matter of the essay had nothing to do with these couplets" He said, "What does it matter, I do not take the subject-matter of the essay into consideration. I take my ten couplets into consideration and twist the subject in such a way that these ten couplets can be quoted". Mian Saheb's ten couplets are contained in Marx's theory. They must be put in day-in and day-out, whether they are relevant or irrelevant, whether they can be brought in or not, but they must be there. There was no reason really for opposing this motion for consideration except telling the world that Mian Saheb believed in certain ideals without which this Constitution will remain incomplete and to which unfortunately a large section of the people of this country do not subscribe at this moment. It is possible for Mian Saheb to convert them to his point of view but he cannot blame the people for the fact that they have yet not been converted to his point of view.

So far as my friend Sardar Shaukat Hyat Khan is concerned, I listened to his speech very carefully indeed, Sir, and I tried to note down a single point to

[Dr. Ishtiaq Husain Qureshi.]

which I could make a reply, but either as a result of my own denseness, or perhaps due to the fact that he was indulging in a kind of oratory that we generally associate with the Hyde Park I was not able to find anything of substance to which I could reply.

Sardar Shaukat Hyat Khan : It needs brain to understand :

Dr. Ishtiaq Husain Qureshi : Perhaps, yes. After all there are certain things at various levels of intelligence which, of course, may be quite clear to one and may not be clear to the other person. I do not quarrel with that point of view at all.

However, Sir, the main thing is, as has been said by practically every person in this House, constitution-making cannot brook any delay. No serious argument has been advanced for not taking into consideration the report; no serious argument, to my mind, has been advanced for postponing the consideration pending the presentation of other reports. We just cannot wait. We shall consider other reports when they come before us. When all the reports are before us, even then we must begin somewhere. We must cut this Gordian knot and I submit, Sir, that the Gordian knot can be cut with nothing better than the sword of fundamental rights. Therefore, I commend the motion by the Honourable the Leader of the House to the House and oppose the amendment.

Mr. Serajul Islam : Sir, I rise to oppose the motion for postponing the consideration.

Mr. President : That has been sufficiently opposed.

Mr. Serajul Islam : No, Sir. I am referring to a certain rule of our own Rules and Regulations.

Mr. President : Please do not advance the arguments that have already been advanced. If you have got anything new to say, you may do so.

Mr. Serajul Islam : The new point that Mr. Chakraverty has raised and no reply has been given either by this side of the House or from the Chair. I am helping him in the matter in my own way, if I can.

The point is whether the recommendations of the Minorities Sub-Committee will have opportunities for further discussion in this House, or not. The mover apprehends, we are putting the cart before the horse, viz., we are moving the consideration motion for considering the fundamental rights debarring the recommendations of the Minorities Sub-Committee from being discussed after the discussion of fundamental rights. Will it be discussed in this House in future also. To that, Sir, I refer you to section 35 of the Rules and Regulations of the Constituent Assembly.....

"35. DECISIONS UPON THE REPORTS OF CERTAIN COMMITTEES.—It shall be the function of the Committee on Fundamental Rights of Citizens of Pakistan and on Matters relating to Minorities, the Tribal Areas Negotiating Committee, the Excluded Areas and the Partially Excluded Areas Committee to report to the Assembly on Fundamental Rights of Citizens of Pakistan and on matters relating to Minorities and the administration of Tribal, Excluded and Partially Excluded Areas; and the decisions of the Assembly upon such reports."

Sir, mark the word " reports. "

.....shall be incorporated in the appropriate parts of the Constitution."

Mr. President : Mr. Chakraverty did not raise that point at all.

Mr. Serajul Islam : Sir, I am raising that point. Those who are apprehending that they will not get any opportunity to discuss the recommendations..

Mr. President : Mr. Serajul Islam, you have absolutely misunderstood Mr. Chakraverty and other Members. That was not the point raised, therefore, you are not to give a reply. Have you got any other thing to say ?

Mr. Serajul Islam : I submit, Sir, that this argument has no ground practically to postpone the consideration of this motion. Sir, I wholeheartedly support the motion for consideration of the Report moved by the Honourable Mr. Liaquat Ali Khan.

Mr. President : Now, I am putting the amendment first to vote.

The question is :

“That the consideration of the motion be postponed till the presentation of the Report of the Minorities Sub-Committee.

The motion was negatived.

Mr. President : I now put the main motion. The question is :

“That the Interim Report of the Committee on Fundamental Rights and on Matters relating to Minorities be taken into consideration.”

The motion was adopted.

ARTICLES 1 AND 2 OF PART I

Article 1 of Part I was adopted.

Sardar Shaukat Hyat Khan : Sir, I move :

“That Article 2 of Part I be omitted.”

Sir, my reason for moving this amendment is very simple. We have provided in the first Article certain laws of citizenship and by the second Article we are permitted to legislate again in respect of acquisition and loss of citizenship. Thus, what we have given by one hand we are taking it back by the other. The rights which we are giving to our people by our Constitution should not be so easily meddled with and the Legislature should not be allowed to interfere with those fundamental rights which are provided to the people of Pakistan by their basic Constitution. That is why I object to the second Article which runs thus :

“The Legislature of Pakistan may make further provision in respect of acquisition and loss of citizenship and all other matters pertaining thereto.”

What I feel is that once a person has been declared a citizen of Pakistan, the Legislature should not have the right to deprive such a citizen of his fundamental rights of citizenship.

Dr. Mahrud Husain : Does it relate to Article 2 or Article 1 ?

Sardar Shaukat Hyat Khan : It relates to Article 2 of Part I.

Mr. President : Amendment moved :

“That Article 2 of Part I be omitted.”

The Honourable Mr. Abdul Hamid (East Bengal : Muslim) : Sir, the position of Pakistan and for the matter of that of the whole sub-continent of India is in such a fluid condition that this power is very essential. There might be quite a large number of people who are living on the border line and who have not yet been able to decide definitely whether they should become the citizens of Pakistan or continue to remain “citizens” of “Bharat.” These things might necessitate the making of fresh rules and to decide who shall be the citizens of Pakistan and who should not be the citizens of Pakistan. From that point of view this power should remain with the Government.

Shri Dhirendra Nath Dutta : Mr. President, Sir, from the speech of my honourable friend, Sardar Shaukat Hyat Khan, it was clear that he objects to the words “loss of citizenship” but he does not object to the provision “in respect of acquisition”. May I, therefore, suggest an amendment which will cover his point ? Article 2 will then run as follows :

“The Legislature of Pakistan may make further provision in respect of acquisition of citizenship and all other matters pertaining thereto.”

What he wants is the omission of the words “and loss of”.

An Honourable Member : You have not given notice of this amendment.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir: I had already thought that the amendment moved by the Honourable Sardar Shaukat Hyat Khan was not justified and the last amendment moved by Mr. Dutta makes it clear that it was not really understood by the mover. The provisions in Article 1 are not exhaustive. Take the fundamental rights of citizenship. What Article 2 does, is to give Parliament further powers for making further provisions with regard to acquisition and loss of citizenship. Therefore, the object of this provision could not be to deprive the citizens of their legitimate right to acquire citizenship. Therefore, I could understand when Mr. Dutta moved the amendment to restrict this only to the loss of citizenship. The article as it stands is absolutely necessary. You must make further provisions for the acquisition of citizenship because these are not exhaustive as would appear from the new Bill that is proposed to be brought by Khwaja Shahabuddin. There are several other provisions for acquiring citizenship which are not contemplated by Article 1. After all, it is the Legislature that is going to decide in what cases there might be loss of citizenship and you cannot contemplate at this stage any case in which this occasion may not arise. There may be a traitor or there may be a Pakistani national who might go and ally with the enemy and do the country harm. It does not mean that the Legislature will deliberately deprive anybody of the loss of citizenship. This is only giving an enabling power to your Legislature to be able to legislate in case of necessity. If you provide in the Constitution that the Legislature shall not legislate, then it will not be proper. Therefore, I do not see any harm in this Article. On the contrary, I consider that on both points—acquisition of citizenship as well as loss of citizenship—, this power should remain with the Parliament. After listening to this explanation I hope the honourable mover will not press his amendment.

Mr. President : The question is :

“That Article 2 of Part I be omitted.”

The motion was negatived.

Mr. President : The question now is :

“ That Article 2 of Part I stand part of the Report.”

The motion was adopted.

ARTICLE 1 OF PART II

Mr. President : The question is :

“ That Article 1 of Part II stand part of the Report.”

Prof. Raj Kumar Chakraverty : We should take up Article 1 of Part II on a new day. This matter requires discussion and if we take it up now we will have to leave it unfinished.

Dr. Mahmud Husain : We can continue the discussion.

Mian Muhammad Iftikharuddin : In nine minutes we cannot really say much on this Article and we will not be fair to the mover of the amendment. Therefore, we should take it up either tomorrow or this afternoon if you like.

Mr. President : Let Mr. Bhupendra Kumar Dutta move his amendment.

Mr. Bhupendra Kumar Dutta (East Bengal : General) : Sir, I beg to move :

“ at for clause (2) of Article 1 of Part II, the following be substituted :

(2) (a) No person shall be deprived of life save in accordance to procedure established by law.

(b) No one shall be subjected to arbitrary arrest, detention or exile.

(c) No one shall be subjected to molestation, torture or to cruel, inhuman or degrading treatment or to any oppressive manner of interrogation.

(d) Places of residence shall not be entered and persons and properties shall not be searched except in such cases as may be expressly permitted by law and in the manner prescribed by law.

(e) The secrecy of correspondence and of the post, the telegraph and the telephone shall be guaranteed. ”

There are two amendments standing in my name to this Article 1 (2) of Part II. If the House does not consider important enough immunity from arbitrary search, arrest, detention, torture, censorship of correspondence and other matters introduced in this amendment and chooses to trifle with such fundamental rights, then only come in the provisos to the original Article as mentioned in my second amendment.

To me the juxtaposition in the Article of the two words “ life ” and “ liberty ” in the present context appears curious, for I believe no one thinks that the life of any one will be taken by the State without a fair or some sort of trial. But so far as “ liberty ” is concerned, the Article as drafted contemplates that a citizen may be deprived of it merely by an executive order without even so much as a show of trial. I therefore want that the Article may be split up : one section dealing with “ life ” and the other with “ liberty ”.

Secondly, the original article reads “ No person shall be deprived of life or liberty save in accordance with law ”. The first part of my amendment changes the wording into “ in accordance with procedure established by law ”. The purpose of this change should be clear. The procedure rulings and conventions, as everybody knows, are no less important than the law itself ; without them the mere letter of the law is sometimes dangerous to follow. I need not dilate on the point.

Now putting the two things—“ life ” and “ liberty ”—together, which, as I have explained, in the present context really places liberty on a lower level than “ life ”, we shall not be behaving like a free or liberty-loving people. This is a degenerate conception of liberty that we find here in this Article. Members may remember that within their lifetime when another nation won freedom from age-long oppression, people went about in their ebullient love of a new freedom putting back catches of fish into the river and declaring freedom even to the fish. But, here this degenerate conception of freedom, as I have said, has come to us from the decaying days of British imperialism. During the last forty years, it played havoc with the personal liberty of the people and the sensibilities of many of us have become so blunted that we have ceased to feel if there is anything wrong about it. Since the First World War, laws and more laws, Diabolical in character, have disfigured the Statute Book. We have inherited all of them without any qualms of conscience. We have, I must say, grown callous ; we no longer prize liberty. I doubt if we honestly believe that liberty is not less dear than life ; else this Article would not have come before this Assembly of a free people in this obscure form, as if the question of liberty is entering here by the back-door.

Sir, this shoe has pinched me for 23 years of my life and under various circumstances and in prisons from Mandalay to Mianwali and from Bombay to Buxar I have known how it pinches and where it pinches. I therefore do not want that others of my race or the future generations suffer from it. So I urge upon you to accept paragraph (b) in the amendment. I ask nothing

[Mr. Bhupendra Kumar Dutta]

extraordinary ; the wording here is not mine at all. It is Article 9 of the Declaration of Human Rights by the United Nations Organization taken *in toto* and inserted here. Pakistan is a member of that august body and I believe this House cannot lightly reject it.

The wording of the next paragraph also is taken almost wholly from that International Declaration and only adapted to our circumstances. In this direction also we are not free from the legacies of the decadent imperialism. Torture and oppressive interrogation are some very mild terms for what even now takes place after somebody is arrested, particularly for political reasons with or without a warrant.

Similarly, in some parts at least the authorities as well as the people concerned do not seem to feel that there is something extraordinary in the violation of the sanctity of a citizen's home. Searches of persons and properties are often taken as a matter of course. But let me inform this House that for protesting against the ignominy of a search of person and property even in prison I courted the record punishment in the history of the application of the old Bengal Regulation III of 1818. I hold and I believe every Honourable Member in this House holds equally strongly that it is a sacred right of a citizen that the privacy of his home as well as his correspondence shall remain inviolable under the Constitution of his country. These last two sections (d) and (e) are adapted from the Constitutions of Iraq, Turkey, Yugoslavia and other countries.

I appeal to the House to accept the amendment.

Mr. President : Amendment moved :

" That for clause (2) of Article 1 of Part II, the following be substituted :

' (2) (a) No person shall be deprived of life save in accordance to procedure established by law.

(b) No one shall be subjected to arbitrary arrest, detention or exile.

(c) No one shall be subjected to molestation, torture or to cruel, inhuman or degrading treatment or to any oppressive manner of interrogation.

(d) Places of residence shall not be entered and persons and properties shall not be searched except in such cases as may be expressly permitted by law and in the manner prescribed by law.

(e) The secrecy of correspondence and of the post, the telegraph and the telephone shall be guaranteed."

The House stands adjourned till 4 P.M. today.

The Constituent Assembly then adjourned till Four of the Clock in the Evening.

The Constituent Assembly of Pakistan re-assembled at Four of the Clock in the Evening, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

Mr. President : I had your complaint * examined. I think you are misinformed. All the amendments that were given notice of in time have been printed.

Shri Dhirendra Nath Dutta : I do not think, Sir.

Mr. President : Our office record shows that.

Shri Dhirendra Nath Dutta : Then the papers must have been mislaid.

Dr. Mahmud Hussain : You might have mislaid it in your pocket.

*Vide pages 4—5 *ante*.

Shri Dhirendra Nath Dutta : I did not mislay it in my pocket ; I am not such a careless person.

Mr. President : I think all other amendments are here. Do you remember the time when you gave notice ?

Shri Dhirendra Nath Dutta : I do not remember the time but I gave in time. I did not keep a copy.

The Honourable Pirzada Abdus Sattar Abdur Rahman : You might have given notice before time.

Shri Dhirendra Nath Dutta : On the 2nd of October I gave notice of two motions postponing a decision with regard to these reports in two different languages.

Mr. President : I hope there is no other amendment on the clauses which has not been included.

Shri Dhirendra Nath Dutta : On the clauses also there are certain amendments not included but I cannot give the details because I did not keep a copy.

Mr. President : So far as our office records go they show that all the amendments that were given notice of in time are printed.

INTERIM REPORT OF THE COMMITTEE ON FUNDAMENTAL RIGHTS AND ON MATTERS RELATING TO MINORITIES—(Contd.)

ARTICLE 1 OF PART II

Mr. President : The amendment of Mr. Bhupendra Kumar Dutta is now under discussion.

Mr. Kamini Kumar Dutta : The article in question in the Report runs thus :

“ No person shall be deprived of life and liberty, save in accordance with Law.”

The amendment proposed has been split up into two parts ;

(a) No person shall be deprived of life save in accordance with the procedure established by law.

(b) No one shall be subjected to arbitrary arrest, detention or exile.

Of course, both these amendments are practically covered by the Article in the Report, because no person shall be deprived of life and liberty, save in accordance with law. I support the amendment in respect of these two clauses not in respect of the entire amendment. There are other clauses also, *viz.*,

No one shall be subjected to molestation, torture or to cruel, inhuman or degrading treatment or to any oppressive manner of interrogation, etc., etc.

On those subjects I would not speak because I find that no one shall be subjected to molestation, torture or to cruel, inhuman or degrading treatment or to any oppressive manner of interrogation. That has been provided in sub-clause (3) of Article 5 of the Report itself. And as to oppressive manner of interrogation, it is rather vague. It will not be possible to have a practical application of it as to at what stage an interrogation will become oppressive and up to what stage it will remain legitimate. But as regards clauses (a) and (b) I think the amendment proposed by Mr. Dutta that instead of the expression ‘save in accordance with law’ it will be more appropriate to say “ save in accordance with the procedure established by law ”, because it would be in accordance with law in the case of a preventive detention if there is a law allowing the detention, then in that case practically this safeguard in the Constitution will give no remedy to him. Actually in India we are finding in the Supreme Court and other Courts in the matter of *habeas corpus* application that if any remedy is being given that is being given because the procedure in order to entitle the

[Mr. Kamini Kumar Dutta]:

detention without trial was not really observed. So the amendment " save in accordance with the procedure established by law " is an amendment of substance. If accepted, it would really give the protection aimed at by this Article, that is, no person shall be deprived of life and liberty, save in accordance with law. That would practically amount to this that if thereby any law is enacted in that case that will justify the detention, even a preventive detention by putting forward the plea : it is in accordance with law. The law has made the provision ; so it is justified and no question can be raised that there is a breach of the Constitution, but if the phraseology " in accordance with the procedure established by law " is adopted, then that will give jurisdiction to the court to enquire whether the preliminary requirements for the passing of an order of preventive detention have been complied with or not, but simply if the guarantee is a safeguard provided remains thus : " save in accordance with law " then that will be depriving the right by providing it with one hand in the Constitution and taking it away with the other hand by simply passing a law. So I think it should be very carefully considered whether this change in the phraseology ought to be adopted or not. Both in the case of life and liberty, " no person shall be deprived of life and liberty save in accordance with law "—instead of that by adopting the amendment of Mr. B. K. Dutta : " save in accordance with the procedure established by law " would give real efficacy to the provision made. As to the other clauses, I have nothing to add. It is for other Members to discuss.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, my friend, Mr. K. K. Dutta has simplified my task in opposing this amendment as unnecessary under the circumstances. First of all, Sir, with regard to the two parts of the amendment (a) and (b) which Mr. K. K. Dutta thinks may be adopted, while the other three may not be necessary, I think the contention of the honourable mover was quite different from the interpretation just now placed before the House by Mr. K. K. Dutta. He was laying stress on the word " established " more than the procedure itself. He meant to say that whatever are the conventions in addition to law, those recognised conventions should be respected by deciding those questions. Now, that is a very difficult matter and it will be quite undesirable to leave anything undecided and indefinite. It is well known that anything can be covered by law, whether it is procedure or it is declaration of a substantive offence. It is very much better to circumscribe the whole thing and say that unless the life and liberty are taken away by law, then only can you resort to such a thing. In all other cases the persons would be free. It is very easy to bring in procedure, conventions and other things.

With regard to the other points raised by Mr. K. K. Dutta that procedure will facilitate the courts of law to enquire whether persons were properly detained or not, I may remind him that the words " in accordance with law " include both the procedure as well as the law itself. The distinction is this that under the Penal Code you declare certain offences by which either you take away a person's life if he has committed murder or you commit him to jail if he has committed other offences. Now you deprive him of liberty, as well as life under the provisions of the Penal Code. Penal Code does not contemplate any procedure at all. Therefore, if you circumscribe it to the word " procedure " alone, then in all those cases of substantive offences you commit a person to custody and deprive him of his life and liberty. Life and liberty will not be covered by the word " procedure ". Therefore, it is very much better to say : except as provided under law. As the Article stands itself, it is fairly wide and it says : " save in accordance with law ". That law may be a declaration of substantive offences ; that may be with regard to procedure ; that may be with regard to anything. Unless and until you provide by law in the Parliament nobody can be deprived of his life and liberty. I think that is very much better and much more satisfactory than circumscribing it.

RIGHTS AND ON MATTERS RELATING TO MINORITIES

With regard to the other three parts of the amendment, as has been pointed out already, (c) is covered by sub-clause (3) of Article 5 which says :

“ No one shall be subjected to torture or to cruel or inhuman treatment or punishment.”

and that is fairly wide to include all the circumstances that have been mentioned in para. 3. With regard to (d) and (e) ; those are questions of detail only. I do not think they are necessary. The word “liberty” covers several things and the draftsman can bring them out. Therefore, Sir, I do not think that the whole amendment is at all necessary and the Article as it stands is very much better. I, therefore, oppose the motion.

***Shri Dharendra Nath Dutta** : Mr. President, Sir, fundamental rights are really human rights. This amendment that has been moved by Mr. B. K. Dutta deals with two parts. Clause 2 (a) deals with deprivation of life. Mr. President, you are aware human right is this :

“ Everyone has the right to life, liberty and security of person.”

This is the declaration of human rights under the United Nations Organisation. The question is when the life can be deprived ? That has been stated in sub-clause (a) of clause 2, i.e., no one can be deprived of life save in accordance to procedure established by law. This applies to countries where death sentence is still prevalent. In such cases one can be deprived of life under the Penal Code and under the procedure adopted therefor. Under the Criminal Procedure Code....

The Honourable Mr. Fazlur Rahman : They are both laws.

Shri Dharendra Nath Dutta : No, Sir.

With regard to clause (b) it is said :

“ No one shall be subjected to arbitrary arrest, detention or exile.”

Human right is this : He has got the right to liberty and to security of person. My friend, Mr. Dutta, says that there cannot be a law subjecting a person to arbitrary arrest, detention or exile. Here it is said—in our Article—

“ No person shall be deprived of life or liberty, save in accordance with law.”

Sir, one can be deprived of liberty if there is a law authorising this. What Mr. Dutta says is that there cannot be any law authorising arbitrary arrest, detention or exile. That is the difference. Here any person can be deprived of life or liberty if there is a law authorising this. So far as liberty is concerned, human right is this :

“ Everyone has a right to life and liberty.”

So far as liberty is concerned, there cannot be any arbitrary arrest, detention or exile even though there may be a law for the purpose. That is the difference. May I now come to Article 9 of the universal declaration of human rights under the United Nations Organisation ? It says :

“ No one shall be subjected to arbitrary arrest, detention or exile.”

Even in the case of deprivation of liberty there cannot be any law authorising this. So there is a vast difference between our Article and the Article as enunciated by my friend Mr. Dutta. Of course, Sir, with regard to sub-para. (a) there is a provision in our Report. It is in sub-para. 3 of Article 5. It says :

“ No one shall be subjected to torture or to cruel or inhuman treatment or punishment.”

That has been provided for. But, Sir, it has not been provided that places of residence shall not be entered and persons and properties shall not be searched except in such cases as may be expressly permitted by law and in the manner prescribed by law. Then with regard to secrecy of correspondence and of the post, the telegraph and the telephone, there cannot be any doubt. They are

*Speech not corrected by the Honourable Member.

[**Shri Dhirendra Nath Dutta.**]

very essential. So, Sir, there is a vast difference between the Article as provided in the Indian Penal Code and the Article as provided by Mr. Dutta. I think the whole House will agree with me that for arbitrary arrests, detention or exile there cannot be any law. There should not be any law....

The Honourable Pirzada Abdus Sattar Abdur Rahman : What is "arbitrary"? How do you define it?

Shri Dhirendra Nath Dutta : If a person commits an offence, he can be arrested. But one cannot be detained for doing nothing. So, Sir, there is a vast difference and I am quite sure the House will agree with me that so far as human rights are concerned, one should not be deprived of liberty even by law.

The Honourable Mr. Nurul Amin (East Bengal : Muslim) : Mr. President, Sir, here we are discussing certain fundamental principles as a directive to the draftsman who will frame the constitution and place the same before this House. We are giving certain rights as fundamental rights to the citizens of Pakistan which must always be subject to the law of the land. Otherwise, Sir, there cannot be any law in the country. Well, nobody can be deprived of life without law. But, if the House accepts that in no circumstances a citizen of Pakistan can be deprived of his life, that is a different matter. But if the House accedes to the fact that there may be circumstances in which even the most precious and valuable thing in human life, i.e., life of a human being, can be deprived of under certain circumstances, those circumstances have got to be judged by the highest body representing the citizens of Pakistan, i.e., Parliament, in that case I do not see any objection to the recommendation suggested by the Committee. The only difference that has been made out by one of the speakers is this ; Well, if it is in accordance with law, there may be some illegal laws—some illegal laws framed by the Parliament. And he puts emphasis on the procedure which has been very ably explained by the Honourable Mr. Abdus Sattar that substantive law is administered through procedural law. First, law has got to be framed and for the execution of that law certain procedural law has got to be framed. So a substantive law cannot be applied in individual cases unless certain procedure is laid down. So, both law and procedure are covered by the expression which has been stated in this recommendation. I do not see any difference if we retain the words "save in accordance with law." There is no difference excepting that "in accordance with procedure established by law" occurs in the Indian constitution. This is the only difference. But there is no difference in meaning. There is no substantial difference. The other point made by Mr. D. N. Dutta was with respect to arbitrary arrest, detention and exile ; these should be prohibited and protection against them should be granted as fundamental rights.

He has been questioned several times, but the honourable member has not explained what "arbitrary" means. Nobody can arrest or detain any person unless on the authority of law and as soon as the law is passed, you cannot call it an arbitrary law. In that case, every accused can question every piece of legislation as arbitrary legislation. As soon as it is passed by the highest body of the Peoples' Representatives, as Law, the character of its arbitrariness goes. It is no longer an arbitrary thing and in framing that law certainly you can provide all the protections to the accused, to the offender, for the liberty of a citizen. That can be provided Sir, when a piece of legislation comes up before the House. So, I will submit that there is nothing strong in the argument advanced in support of the amendment moved by the Honourable Member Mr. Bhupendra Kumar Datta.

Mr. President : The question is :

"That for clause (2) of Article 1 of Part II, the following be substituted :

'(2) (a) No person shall be deprived of life save in accordance to procedure established by law.

- (b) No one shall be subjected to arbitrary arrest, detention or exile.
- (c) No one shall be subjected to molestation, torture or to cruel, inhuman or degrading treatment or to any oppressive manner of interrogation.
- (d) Places of residence shall not be entered and persons and properties shall not be searched except in such cases as may be expressly permitted by law and in the manner prescribed by law.
- (e) The secrecy of correspondence and of the post, the telegraph and the telephone shall be guaranteed."

The motion was negatived.

***Mian Muhammad Iftikharuddin :** Sir, I beg to move the following amendment :

"That after clause (2) of Article 1 of Part II, the following be added :

- '(a) No person shall be detained without trial except in case of war.
- (b) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the rounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.
- (c) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless the High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.' "

Mr. President, Sir, the amendment that I have tried to move can best be explained and understood if I quote a few passages from the speeches of the Founder and Father of Pakistan. Sir, speaking on a similar measure in the Indian Legislative Assembly some years ago, the Quaid-e-Azam said :

"My ground for opposing the measure is (that is about the detention without trial) that the powers which are going to be assumed by the Executive (which means of executive for judicial) such powers are likely to be abused. In the past we have instances where such powers have been abused."

On another occasion, the Quaid-i-Azam was pleased to say :

"If I felt that my life was in danger and I was going to be shot down even like a dog, I should never be a party to a measure which will endanger the life and liberty of the innocent population as this measure undoubtedly does."

Again the Quaid said :

"I maintain that if you, the Government, do not respond to the wishes and opinions of the people, no number of Statute will destroy the analytical organisation which you are talking of and which you want to arrest and destroy by means of this little Statute. The way to prevent bombs being thrown is to meet the people and respond to their feelings, their sentiments and their legitimate and proper aspirations."

Again, Mr. President, the Quaid on a similar Bill said :

"The Bill is intended to carry to its logical conclusion the nefarious plans of the Government to detain persons indefinitely and to strike at the root of the right of persons to claim the writ of *habeas corpus*. I see Government persist in its policy obstinately. I say, once more, that you will regret it. You will create more trouble."

Mr. President : You can quote what the Quaid-i-Azam had said on different occasions, but what is your object in doing so.

***Mian Muhammad Iftikharuddin :** I can quote that the Quaid-i-Azam did take that view on a measure like this. I don't think that any speech made in this House can put forward the point of view that I wish to put before the House more effectively than the few words of the Father of the Nation that I have quoted. And if our Leaders have forgotten those words and if they are not prepared to heed to the advice that he then gave to the Government of the day, I have no doubt that they will not listen to us. The speeches, however, that we have to make to discharge our duty in this House are a formal affair and following that I will submit my points on this motion.

Sir, when a few months ago the Government promulgated Ordinances for detention of this nature, we thought that our Government have yet to come out of traditions of British Imperialism and at that time.....

Mr. President : I am sorry to interrupt the Honourable Member. What the Government did or did not do on particular occasion, that is not under discussion. Whether you are going to provide these fundamental rights, that is the question before us now. If you want to add anything to these rights or to amend those rights in any way, you can do so, on this point we are not concerned with the Government at all.

Mian Muhammad Iftikharuddin : I stand corrected, Sir. In fact I was careful in the beginning of my speech to use the word "Leaders".....

Mr President : That also does not appear to be quite correct.

***Mian Muhammad Iftikharuddin :** Probably I have been misunderstood. In fact I was trying to prove from past experience that such powers can be dangerous and therefore, we should not insult the Constitution by incorporating such inhuman and barbarous laws in our Constitution. That is the point that I was trying to bring before the House and I would be careful. Sir, in not mentioning the Government. However, I will put my point of view as best as I could with reference to the context.

Sir, I beg to submit that in the past we have felt that it was necessary to have things like that as it was transitory period and that we were being governed by the British Imperialism and traditions. Therefore, though it was unpardonable, but one thought perhaps the Government had not or perhaps our officials or people who were responsible for carrying on the affairs of this country had not forgotten those traditions. But, Sir, when we now frame a new Constitution, I think one can rightly be surprised even be shocked, to see that it has been incorporated there too.

The Prime Minister of East Bengal has just made a speech to the effect that we should have confidence in the Assembly and that there cannot be an illegal law and that if there is a law, then it is redundant to say that people will be tried in accordance with that law. I think he is perfectly right in so far as it goes that if there is a law in this country that you can put in jail any opponent and you yourself are to be the judge as to whether that opponent has been put into jail because he was the opponent of a particular person in power or because his activities or intentions were harmful to the country. If you yourself are to be the judge, then, Sir, that law is a scandalous law. And the attempt that is being made by the Honourable Members who have already spoken in support of a previous amendment and also by me in supporting my own amendment is that we should not allow in our constitution any such law. There should be no law by which you or the executive or anybody else who is in command of affairs is to decide whether a person's activities are dangerous or not. That is the point under discussion and I am sure the Premier from East Bengal will admit that this is not illegal when we request this august House that we should allow no law whatsoever to be framed in future in which a person may not appeal to a proper court. That law will not be not only an illegal law—I am using this phrase because he has used it—but it will be a barbarous law and it will be a law which we should oppose tooth and nail.

Now, this article in the Report on Fundamental Rights authorises or gives permission to a future Government to have such a law. That is what is being opposed and in my amendment I have limited the application of such a law to very emergent circumstances. I feel that during the war it may be necessary to have such a law because at that time it is possible that the Government may not be in a position to go into such details and they may want to arrest a person immediately, but even under such circumstances it is necessary that within a certain period—a period of three months has been suggested and

* Speech not corrected by the Honourable Member.

this is also the period according to the Indian constitution—the person concerned should be brought before a proper court where he should be allowed to explain his conduct. He should be told there what are the charges against him. Apart from that period of emergency, there should be no other time when such a detention should be permitted. The Honourable Mr. Liaquat Ali Khan said in the morning that we should not quarrel with words and I am not going to quarrel with words. When I say war, I can well imagine that there may be times even before the war when it may be necessary to declare a state of emergency. It is obvious that when such an occasion arises, surely a person can be detained. But even at that time, I repeat, he should be allowed to have a proper trial and he should be allowed to appear before a proper tribunal and to explain his conduct, otherwise we will really make it impossible for any new and better Government or a better society to come into being in this country. We must be very careful about it because, unlike most countries in the world, our State has come into being practically overnight. Other countries like England, America and the rest of them have long traditions and they had occasion to go through their laws in practice for decades and in some cases for centuries. In those cases the change of Government, the change of laws and even the change in the constitution is not so necessary as would be in the case of a country which came into being only three years ago and which is yet to pick up the old glorious threads of its traditions and which is to weave them in the new structure. Sir, it will take a long time before it is beautifully and properly woven. Therefore, I think that Pakistan should be the last country in the world where such a law should be allowed to exist.

Sir, it has been argued and with some justification on occasions in the Constituent Assembly (Legislature) by the Minister of the Interior and his Deputy that the law which the Government has framed or promulgated by means of an ordinance has rarely been used. I know it has not been freely used though on occasions it has been used ruthlessly, unscrupulously and for personal reasons. Nevertheless I must admit that they could have arrested more persons if they had so liked and they could have punished more persons. They could have avenged themselves against their unpleasant opponents to a much greater extent than they have actually done.

Mr. President : You are again going into that question.

***Mian Muhammad Iftikharuddin :** If there is a law like this in the country

Mr. President : It is likely to be abused ; you have already said that.

***Mian Muhammad Iftikharuddin :** Sir. I will now mention just one instance.

I am not talking of Pakistan now, but I will try to point out what happened in the last 100 years. Our experience of the British Raj shows that there were times when the British Government did not have more than 20 people in the jail. We know that in 1865 or 1870 just after the Mutiny when they had killed all the Ulemas and all the other people who were responsible for the Jihad there was hardly a person in the jail. I am trying to support the point.....

Mr. President : Order, order. I have already said that you can say generally whatever you like on the amendment that you have moved, but it is not necessary to give instances at all. Your point is that if such powers are given to the Government, they are likely to be abused. That is a simple point and you have repeated it several times. What is the use of wasting the time of the House by repeating such instances ?

Mian Muhammad Iftikharuddin : This is exactly what I am not going to do, if you allow me to say a few words. What I am trying to prove is that the mere existence of this law has proved in the past that it is a very dangerous thing and the example is a very good one that I was trying to put before

[Mian Muhammad Iftikharuddin.]

the House. There were not more than 20 people in the jail in 1870 and the British Government could get up and boast that there is no demand for freedom and therefore they need not give freedom to India.....

• **Mr. President :** If you are allowed to go on in this way, you can go on for days together. I think you are not relevant when you are referring to such instances.

***Mian Muhammad Iftikharuddin :** I feel that I am quite relevant, but I must bow to your ruling. All that I am trying to prove is that the mere existence of such a law is deterrent enough to a new political thought and to a new political development which are essential for a living State. I have given the example of the British Raj in India when there was not a voice against that Raj and yet who can deny that each and every individual of India at that time wanted freedom. So, the existence of a repressive law was bad enough. This is what I am trying to prove. Likewise, the existence of this abominable law will make it impossible for most people in this country to ask for further reforms and to ask for the overthrow of an undesirable Government.

That being the case, I oppose this article. I thought that was the point which I should have brought to the notice of the House. However, I submit to your ruling and I pass on to the next point.

We have seen during the last three years that our judgment can go wrong and this is a matter of judgment because it is the executive that take power. I think even the most responsible person in this House would agree that not only in one province but in several provinces—I remember clearly the case in one province—when one party came into power it arrested some of its opponents and when the other party came into power, it released those persons and arrested their opponents.

Now, the Safety Act was being used all the time. So knowing this that people are human, people can be personal, people can be selfish people even be unscrupulous as has been seen even in a short period of three years, I think the existence of such a law is a dangerous thing for the future development of Pakistan and it should be opposed. Even as individuals, I submit, the Government judgment in all cases can be very wrong. The Government considers a person to be guilty, sends him before the highest tribunal where it is discovered that he is not guilty. Now I do not blame the Government for sending the person before the highest tribunal or even before the court of a sub-judge. Nevertheless, it has been found that the highest people—not a sub-inspector whose judgment one may say can go wrong, not an Inspector General of Police or a Deputy Commissioner or a Collector—ever higher authorities have considered certain people guilty and in courts it has been found rightly or wrongly that they were not guilty. Now such mistakes can take place, such fallacies are understandable, and in that connection, Sir. I think as I have already read out one or two things on that I would point out just one instance from the Quaid-i-Azam's speeches which illustrates or proves the stand that I am trying to take on that question. In defending a case he said :

"I am not one of those men who encourage any action or any offence but I do maintain and I have drunk deep on the fountain of constitutional law—that the liberty of a man is the highest thing in the law of any constitution and it should not be taken away in this fashion."

I will not go on, but I was saying that even a legal mind feels that it is the most important thing and it should not be left into the hands of factional leaders or should not become a toy to be played with as they want to remain in power. So, Sir, I feel that in taking this decision today—during the past one year we have had a good deal of bitterness in this House on the question of civil liberties, on the question of Ordinances, but this is a different occasion altogether—today, Sir, we are framing a new law. In fact, this is the first product of our

* Speech not corrected by the Honourable Member.

genius which we have talked for three years or in fact for ten years, even before Pakistan came into being. This is the first fruit ; this is the first flower of our efforts to show to the world what a wonderful background, what a wonderful tradition, what a wonderful soil we have in which we will give birth to, or from which will raise something—let the Constitution be Liberal, be it Social, be it Economic—something that the world has not seen before, because we are laying our foundations, we are drawing our inspiration from moral principles, unlike most of the States and peoples of the world.

Now, after that on this first day of discussions, when I see this law, Sir, it really shocks me and I have a feeling after what I have read from the speeches of the Quaid-i-Azam that if they search their hearts it will shock even most of those who have so far supported the cause of Ordinances and such laws. I therefore appeal to them and I would just ask them to test one point and that is this. Do they feel or do they not feel that they too can make mistakes ? If the people living in Karachi, if the people whom we consider as the embodiment of ideals for which Pakistan stands—and they are the people who have the reins of power in their hands today—even if they can make mistakes in their judgments—and I think the stage has reached when they themselves feel that they can have made mistakes sometimes ; they should not become arbiters of their own actions—then let us have our law courts, let us have our judges, let us allow them to function freely and fairly so that even if there is one or twenty or thirty persons, who should have been actually behind the bars, are going about merely because there is no Ordinance, no preventive detention, well I say, Sir, that we should allow these twenty or thirty persons to go about. If this State of seven or eight crores of people is so shaky that it can be overthrown by the activities of twenty or thirty or even by the activities of 5,000 such criminals, I think, Sir, they should be allowed to go about.

Mr. President : Mian Iftikharuddin, you are criticizing the present Administration.

Mian Muhammad Iftikharuddin : I am not criticizing the present Administration

Mr. President : Then whom are you referring to ?

Mian Muhammad Iftikharuddin : I am saying that even if we have such people we should not curtail their liberty.

Mr. President : You are not saying that. Please be relevant and speak to the point. I have repeatedly told you that we have nothing here to do with the behaviour of the present Government.

Mian Muhammad Iftikharuddin : I was not talking about the behaviour of the present Government. I was saying that even if

Mr. President : I know what you were saying. Please go on.

Mian Muhammad Iftikharuddin : I was saying that even if 5,000 people were going about whom under the preventive detention law we could have put into jail and who should be in jail under the present law

Mr. President : That is hypothetical.

* **Mian Muhammad Iftikharuddin :** No. The Government fears that there may be trouble, but I say that we are framing a Constitution after all for a Government and if the Government may fear that there may be four or five thousand people going about as criminals—as enemies of the State, who should be inside jail ; therefore there should be such a preventive law—even then such a preventive law should not exist because a State of seven or eight crores of people should be strong enough, should have confidence in itself enough to withstand 5,000 criminals or 5,000 spies. That is the point I was trying to bring to your notice.

[Mian Muhammad Iftikharuddin.]

With your permission, Sir, finally, I was saying in this connection—because I shall be getting up frequently as there are about 75 amendments standing in my name in the course of this debate and on the Fundamental Rights Committee and then on the Basic Principles Committee—and I would like with all respect to bring it to your notice that only this morning I heard a speech from the Deputy Minister, who spoke nothing for ten minutes except to attack my Marxism or to attack my personality, and related a story of a school-boy who would recite his couplets at every place. Now, Sir, I have not stooped to that level. I would have easily attacked any individual there. Even the Professor himself I could have attacked. It is just possible that you may be quite justified in what you do but when remarks are made and speeches are made from the other side making attacks as the Professor did for a long time in which I was the target of his attack, no objection is taken to those remarks or speeches. I am not trying to cast any aspersion on you; you may be quite justified in that but when even a far-fetched reflection or reference is made on the Government you take objection to that whenever it comes from this side. When you do so the result is that weak and nervous people like myself are then in no position to make their speeches. Our position is made still more weak.

Mr. President : Ordinarily you speak longer than any other Member of this House. But now that you have made that grievance I must point out that your mind is obsessed with the present administration that you try to avail yourself of any opportunity to fall foul of the Government.

We are not concerned with the Government here. You can speak generally on your amendment. I shall allow you to go on doing so as long as you like but I shall appeal to you not to take too much time of the House. If you are really sincere in your attempt to expedite the framing of the constitution you can, I think, very easily finish your speeches within a short time. I would therefore, appeal to you not to indulge in irrelevant discussion.

Shri Dhirendra Nath Dutta : Mr. President, I want to know whether in view of what you have said I can refer to this Government as well as the conduct of the Governments of the world in other countries. I want to refer to this to show how the Governments of the world, are taking away all the liberties of the human beings. In doing so I think we are entitled to refer to the conduct of this Government and the conduct of other Governments of the world.

Mr. President : Everyone knows what is what. Being on a point like this if you are to give instances or describe the behaviour of the Governments of the world, not only of the Governments of the world of the present day but throughout history in that case you can take years in developing your point. That is why I was appealing to your side that if it is not your intention to delay the framing of the constitution then Mian Sahib can very easily make himself understood within a very short space of time.

***Mian Muhammad Iftikharuddin :** On a point of explanation. When I cite even instances of British Government I am just made to sit down. I cannot even illustrate my point. Whenever I discuss the detention ordinance, which is the creation of this Government and the most important enactment that we have passed during the last three years and give any instance I am made to sit down. Even if I illustrate from my own experience that I have undergone during the last few years I am not allowed to speak. It was no intention of mine to cast any aspersion on the Government. I would have done it, if I wished to do so, in a straight manner which I am used to do up to this time. But this is not the intention. I was merely trying to show that nobody in any place can be infallible, and every human being is fallible. That is all I was trying to show.

*Speech not corrected by the Honourable Member.

Mr. President : If you only refer to that that is quite enough. Everyone in this House, Mian Sahib, knows about the behaviour of the British Government. But if you want to illustrate the exact behaviour and narrate details of that Behaviour then you can go on speaking for hours together. Is that really necessary? You can refer to a few instances, and Members will be able to follow you very easily. I think if you better confine yourself to only a few instances instead of elaborating on those instances. That would be quite proper for you. Do you want to continue still?

The Honourable Pirzada Abdus Sattar Abdur Rahman : He has finished, Sir.

***Mian Muhammad Iftikhar uddin :** To tell you the truth, this is a time when you cannot just stand. You may be absolutely just and you are just but in this morning's 20 minutes, speech Dr. Qureshi gets up and speaks about me and attacks me personally and there is no objection. That is you, constitution but when I speak and illustrate my point and try to give an example as to what my point is, well, I am just made to sit down. So Sir, I sit down.

Mr. President : You can illustrate your point and you can cite instances as many as you can but you cannot elaborate those instances because everyone knows what you mean to say. You can speak if you like.

***Mian Muhammad Iftikharuddin :** Thank you, Sir. I do not want to avail myself of this opportunity.

Mr. President : I have to place the amendment to the House :

Amendment moved :

" That after clause (2) of Article I of Part II, the following be added :—

' (a) No person shall be detained without trial except in case of war.

(b) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(c) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.

The Honourable Mr. Nurul Amin : Mr. President, Sir, I will take up the last principle advocated by the Honourable Member moving this amendment, that is to say, that if about 5,000 people are in imprisonment under the preventive order and if that is their total number then he thinks that it is a most cowardly act on the part of Government and 8 crores of people to pass such enactments. He said we should not fear these 5,000 people.

He thinks that they should not be detained under preventive order for that reason. If that principle is accepted, Sir, I do not see any necessity of passing any act for ordinary criminals also because the percentage of ordinary criminals is not very much. They may be much less than probably 1/4th percentage of the total population but even then we have got all these penal laws for their punishment. So I feel sure that that is no argument that when the number of criminals is less than the number of the entire population there should not be any law for their detention. If this principle is accepted then I do not see any necessity of any legislation for bringing criminals to book.

Now, Sir, with regard to the amendment my objection is this that essential things have been confused with non-essentials. Here we are to give certain instructions in essential matters not that we can provide for everything in these essential directions. We have said that life and liberty of a person should not be deprived of save in accordance with law. That is the main principle and law includes preventive law too. But when this preventive law comes before this

*Speech not corrected by the Honourable Member.

[The Honourable Mr. Nurul Amin.]

House or future House they will certainly take into consideration all the provisions in that law. They will certainly make provisions for due protection of the person detained and about his defence and comfort and all other necessary matters. But here these have been inserted as if we are discussing and considering a Bill on preventive detention. Quotations have been cited from the late Quaid-i-Azam's various speeches in the Indian Legislature before Partition but you must realize that the arguments contained in those speeches are based on them will have their force when these are used in connection with a specific Bill on that particular issue when it comes before this House.

But now in granting fundamental rights we are giving directions for providing fundamental rights in the constitution and we do not want to say that after 24 hours a person has got to be produced before a magistrate and he should not be detained more than three months, etc. These are matters of detail and these are already inherent when we say that nobody's liberty can be taken away without satisfying the provisions of law and when that law comes in we shall certainly discuss all these matters. So I should submit that all these suggestions that are incorporated in the form of amendments will have their proper forum and place when the particular law comes up before the House and not now. On these amendments my suggestion is that we should not devote more time in discussing such matters because these are matters of detail and we should dispose of the main and most essential rights which are going to be granted to the citizens.

Shri Dharendra Nath Dutta : They are not children.

The Honourable Mr. Nurul Amin : May be second stage of childhood.

The Honourable Pirzada Abdus Sattar Abdur Rahman : I am sorry to remind my honourable friend that he does not have a complete picture of the fundamental rights that are being proposed in this report for the citizens of Pakistan. If he had a complete picture in his mind he would not have opposed the passing of this report or tried to delay its passing. He forgets that in the same part there is a provision subsequently with regard to writ of *habeas corpus* and I do not know if he has got the right conception of the rights of citizens under the writ of *habeas corpus*. Otherwise he would not have mixed up preventive detention like this. All along, Sir, he has been arguing for misuse of power of detention without trial. He has said that any future Government coming in might put their opponents in jail without any cause, without any reason. That has been the substance of the instance quoted by him and the arguments repeated by him over and over again. He has been speaking about them in this House, but he conveniently forgets that under the writ of *habeas corpus* no person can be brought before a High Court or the Supreme Court whether he has been detained under the Safety Act, under the detention provisions or any other Act, whether with trial or without trial and if the court finds that the detention is *mala fide*—those are the instances to which the honourable mover has been referring all along—then that person will be released forthwith. Therefore, Sir, when a complete picture is before the House, the writ of *habeas corpus* is given. That means, it is a safeguard for all the cases which have been mentioned by the honourable mover today in the House. Then I do not see why he should paint such a picture before the world and say that we are framing a constitution in which there is no personal liberty. We are detaining people without trial and no opportunity is being given to them for going before courts of law. Certainly he would agree and that is why he has conceded by proposing this amendment that in reasonable cases—that is the purpose of his amendment—where the

detention is justified the man may be committed to custody under preventive detention without trial. That is what he proposes. That is the purpose in arguing for three months that the High Court may revise it. But, then, this provision exists in the nature of *habeas corpus*. Certainly, there is a complete liberty. That is a guarantee to the individual and that is provided that writ of *habeas corpus* shall not be suspended, except in the event of a grave emergency. Today he has stated that in the case of a war, anybody may be detained. Therefore, the object that is sought to be achieved by this amendment is already there and I do not think, therefore, it was necessary to move this amendment at all.

Further, Sir, with all respect to the drafting capacity of the honourable mover, I may remind him that the amendment as proposed by him is self-contradictory. In the first part of the amendment he says that no person shall be detained without trial. Again, subsequently, he says a person may be detained for three months without trial and, again, the second part....

Mian Muhammad Iftikharuddin : You have not read it well.

The Honourable Pirzada Abdus Sattar Abdur Rahman : I have read it fully well and I will read it again to make you understand what you have written which probably you have not understood.

In the first part of the amendment he says no person shall be detained without trial, except in war. There is no limitation at all. No person shall be detained without trial, preventive or other detention. He has not said the word "except" anywhere. Then he says : No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless High Court has reported.... Therefore he concedes that there may be detention for three months without trial. So the first part contradicts part (c). On this motion also, Sir, I think he did not probably think at that time what he was writing. He put in one thing—no detention without trial. Then, again he brought in the conditions under which he may be detained, but all the same, as I have submitted, the picture of the fundamental rights is complete. We have got complete safeguards in the existence of the writ of *habeas corpus*, under which all *mala fide* detention by Government whether under Safety Act or any other law that may be passed subsequently—that is *mala fide* detention for personal purposes—is unjustified. Then the High Court has got power to release that person. Another thing I may bring to the notice of the Honourable mover is that here we are discussing the future powers of legislation by Parliament and as Mr. Nurul Amin has said, all the time the honourable mover has been discussing as if we are discussing or formulating the Safety Law and all these details have been proposed as if he was detained under Safety Law and his case must be revised after three months. These amendments he may bring when the law comes before Parliament. For all these reasons, I think the provisions already made in this Article are complete and sufficient to safeguard the liberty of a citizen of Pakistan. I, therefore, oppose this amendment.

Mr. President : The House stands adjourned for twenty minutes, till 5.30 P.M. for *Asar* Prayers.

The House then adjourned till Thirty Minutes Past Five of the Clock, in the Evening, for *Asar* Prayers.

The Constituent Assembly of Pakistan re-assembled at Thirty-five Minutes past Five of the Clock in the Evening, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

INTERIM REPORT OF THE COMMITTEE ON FUNDAMENTAL RIGHTS AND ON MATTERS RELATING TO MINORITIES—(Continued)

Prof. Raj Kumar Chakraverty : Sir, I do not want to speak on any

[Prof. Raj Kumar Chakraverty.]

amendment but I want to be clear on a point of procedure. Sir, you will notice that Articles 7, 8, 9 and 11, deal with the same matter—preventive arrest and detention. Some members have tried to put a proviso; others have suggested independent amendments. I want to know whether you will allow us to have discussion and vote Article by Article or you will allow us to move all the amendments, and then to have voting, article by article. I find the Honourable Mr. Abdus Sattar has given reply just now possibly on behalf of the Muslim League Party. If I am allowed to move my amendment and then Mr. Dutta is allowed to move his amendment, the Honourable Pirzada will have to say all these things again. Therefore, I suggest you kindly allow us to move our amendments first and then there may be one reply. They all deal with preventive arrest.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Eight is about acquisition of property.

Prof. Raj Kumar Chakraverty : No, Sir. Amendment No. 8.

The Honourable Mr. Liaquat Ali Khan : I think the suggestion that has been made is a very good one. It would save the time of the House if all these amendments were moved now and they were all discussed together. They could be put to vote one by one.

The Honourable Mr. Abdul Hamid : I visualise some difficulty. Some parts of the amendments are identical and some part different. How to vote. . . .

Dr. Mahmud Husain : It will be separate.

The Honourable Mr. Abdul Hamid : Certain matters in which we have voted against, how can we vote for the same thing again?

Dr. Mahmud Husain : Voting will be separate.

The Honourable Mr. Abdul Hamid : Some parts are identical and some parts are not.

Mr. President : I think it is better that they may be moved together. If one is covered by the other, that will not be put to vote. In that case, do you want that while discussion on this amendment is going on, you move the others?

Some Honourable Members : Yes.

Mr. President : (Addressing Sardar Shaukat Hyat Khan) You may speak later on.

Sardar Shaukat Hyat Khan : The amendment is already half way through. This procedure may be applied after discussion on this amendment is over.

Mr. President : That will not prejudice you in any way.

Sardar Shaukat Hyat Khan : That would not, but we are.... . . .

Mr. President : Yes, Mr. B. K. Dutta.

Mr. Bhupendra Kumar Dutta : Sir, I beg to move:

“That the following provisos be added to clause (2) of Article 1 of Part II:—
‘Provided that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall as soon as may be, communicate to such person the specific grounds on which the order has been made and thereafter, shall afford him the earliest opportunity of consulting a legal practitioner of his choice and of making representations against the order.

•Provided also that no law providing for preventive detention shall authorise the detention of a person for longer than three months unless an advisory board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiry of the said period that there is in its opinion sufficient cause for such detention.

'Provided further that a new board of the same nature shall re-examine and pronounce upon the case in the event of a fresh order for the continuation of detention which shall not hold good for longer than a period of six months.

'Provided also that a person held in such preventive detention shall receive treatment in conformity with his health and hygienic and intellectual needs as well as habits and status in life and in accordance with rules to be framed in this behalf by the Legislatures, Provincial or Central, as the case may be. Provision shall also be made for the maintenance of his family and for the proper protection of his financial interests.'"

Shall I speak also at the same time?

Mr. President : Yes, you may speak.

Mr. Bhupendra Kumar Dutta : Sir I desire with all my heart that the power to detain a person without a fair trial should not find place in the Constitution. But it is likely that the House will take a different view. I recognise that we are passing through difficult days, although I hold that most of the difficulties of the day are of our own creation, I mean, the creation of those who sit at the top of the society—society not only of our country but almost of all countries of the world. Because those sitting at the top are for their vested interests, resisting the normal adaptation of the social structure to the presentday conditions and productive forces, we are being compelled to resort to all manner of abnormal shifts and devices. This detention business is one such device. If then you will have it, it must be recognised that it is a device of injustice and as such its mischief must be circumscribed as far as human ingenuity can contrive. We must be conscious that here we are about to withhold and not extend the chiefest of the fundamental rights of a living human being.

The first three provisos come in because it is in the very nature of all administrators that they would look for the easiest method of administration, and in doing so to try by all means to give short-shrift to considerations of ordinary justice. Friends would easily recall the Dreyfus case. Dreyfus was accused of high treason, subjected to ignominy and deported. Then because Col. Picquart, the head of the detective bureau, a year later found out that Dreyfus was not guilty and had been punished for somebody else's offence, Picquart was removed from service. Again because Emile Zola made a powerful protest, he was also imprisoned. This is. . . .

Mr. Nurul Amin : World is inhuman.

Prof. Raj Kumar Chakraverty : Let us safeguard it.

Mr. Bhupendra Kumar Dutta : This is the way of the administrator and we should not give him the power to function unfettered in such a matter as depriving citizens of their personal liberty.

Here, I should like to narrate a story from my personal experience. It was the days of the Indo-German conspiracy of 1914-18. I was then in hiding and a letter of mine fell into the hands of the Police. That letter made mention of one Profulla of the Bangabasi College. I meant a professor and not any Profulla and used the word only to divert attention and make identification difficult. All the same the Intelligence Branch hauled up quite a number of Profullas who were students of the College, never suspecting that I might mean a professor. All these Profullas were harassed, particularly one, who happened to be the relation of a detenu. This youngman for nothing suffered in detention for months.

To guard against such oppression my amendment requires that every executive order must be scrutinized by experienced Judges on the basis of facts placed before them—though secretly. I know facts are in such cases looked up and judges also function within the framework of a particular social or political set-up. As such in our detention period during the first World War, 1,220 cases were placed before Justices Chandravarkar and

[Mr. Bhupendra Kumar Dutta.]
 Beachcroft and out of them only 20 were found not guilty of the charges laid against them. Yet, I think, it is some protection against injustice.

The amendment further provides for an opportunity to the detenu to know the specific charges brought against him, then to consult a lawyer of his choice and make representations refuting the allegations. According to civilized conception of law, every person is treated as innocent until he is proved guilty—the burden of proof lies on the accuser—but in the case of a person detained without trial, he is to prove his own innocence. In that absurd position, the charge laid against him is almost always too vague and too general into the bargain. For instance, if ever I should be in the privileged position to charge Mr. Liaquat Ali Khan that he conspired with certain persons to overthrow by violence the State of Pakistan, I dare say, he could not establish his innocence.

The Honourable Mr. Liaquat Ali Khan : Nobody would believe it.

Mr. Bhupendra Kumar Dutta : In fact, in 1925, the late Pandit Motilal Nehru read out, in the Central Legislative Assembly from the copy of a representation I had sent to the Secretary of State for India from Bassein Central Prison in Burma, the charges then brought against us. He confessed that if those charges were brought against him, he would not be able to refute them. Therefore, this amendment requires that the charges brought against the detenu must be specific and he must obtain the assistance of a lawyer.

That is hardly any remedy in the hopeless situation in which a person without trial finds himself. Yet something has to be considered as better than the vague sort of thing often typed out in a sheet of paper called the charge-sheet. In some confidential papers in course of the last two years I have seen it mentioned that a certain person is an ex-detenu. Can that be a charge against somebody? Yes, some people were detenus under the British rule and it is more than probable that had not those people chosen to suffer that way, this sub-continent would still be under British heels and we would not sit here today to write the constitution of a free Pakistan. But what has his being a detenu then got to do with his conduct or activities now? To deal with such frivolous and shameless charges leading to the deprivation of a citizen's liberty, the amendment provides that the charges laid against him together with his answers must be examined by a body of Judges before the order of detention is confirmed.

Then there is provision that the detention shall not be indefinite and that the detenu must not remain a forgotten quantity in his prison cell. His case must be re-examined by a fresh board if he is to be detained for another six months. Our experience is that if the same judicial board continues, it functions simply by confirming its old findings.

Few of our friends here can probably imagine that hard labour inflicted even for a long period is often far more preferable than indefinite detention. A blank future tells on the nerves, the mind and the health of a man very much more powerfully than a known future, however hard.

Yet, it is a sad commentary on our present situation, some administrators support harsh treatment to detenus, publicly urging that they are to be treated as enemies of the State. The treatment that is being now meted out to them in respect of food, clothing, recreation and intellectual amenities and their family and financial requirements would be considered disgraceful even if received from foreign imperialists. Fortunately, we still come across administrators with different views. I could not do better than quoting the Prime Minister of Pakistan on that point. He once said, yes, they might be enemies of the State. But have we proved that they are enemies of the State? That is an intelligent view, an enlightened view of the matter. But unfortunately, as such enlightened view is so very rare amongst us, I have put in the last proviso in this amendment.

I hope my friends here will not grudge the poor wretches the small mercies this proviso seeks to confer. It does not behove us to be cruel in our attitude in this House. It amounts to being cruel to our future generations. Besides, we should not exhibit before the world as if we do not care for personal liberty. I, therefore, urge on you to accept the amendment if not the earlier one of mine.

Mr. President : Amendment moved :

“ That the following provisos be added to clause (2) of Article 1 of Part II :

‘ Provided that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the specific grounds on which the order has been made and thereafter shall afford him the earliest opportunity of consulting a legal practitioner of his choice and of making representations against the order.

Provided also that no law providing for preventive detention shall authorise the detention of a person for longer than three months unless an advisory board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiry of the said period that there is in its opinion sufficient cause for such detention.

Provided further that a new board of the same nature shall re-examine the pronouice upon the case in the event of a fresh order for the continuation of detention which shall not hold good for longer than a period of six months.

Provided also that a person held in such preventive detention shall receive treatment in conformity with his health and hygienic and intellectual needs as well as habits and status in life and in accordance with rules to be framed in this behalf by the Legislatures, Provincial or Central, as the case may be. Provision shall also be made for the maintenance of his family and for the proper protection of his financial interests.”

Prof. Raj Kumar Chakraverty : Sir, I move :

“ That the following provisos be added to clause (2) of Article 1 of Part II :

‘ Provided that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

Provided further that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an advisory board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiry of the said period of three months that there is in its opinion sufficient cause for such detention.”

Sir, my amendments is almost on the same lines as that of **Mr. Bhupendra Kumar Dutta** except for a slight difference. He wants the assistance of a legal practitioner for the detenu to defend his case, whereas I have forgotten to put it down. My amendment has also omitted the last two paragraphs of his amendment. My task has been very much simplified by the elaborate way in which he has supported his amendment.

Sir, I know that some of the provisions of our fundamental rights have been borrowed from the Irish and other constitutions. The amendment that I have moved has been borrowed from the Irish and some other constitutions. So, it cannot be said that this is something new in the history of the constitutional law in the world. I have to admit that in certain cases persons have to be arrested and detained just to prevent them from doing some mischief. But my point is that this is a very dangerous provision and we ought to put a check upon such an arbitrary exercise of powers by the executive Government. Everybody can be arrested in due course of the law. That is very good law, but the chances are that this law is very often abused in the hands of an irresponsible executive or in the hands of unscrupulous officers. Now, it is our duty to minimise the chances of such an abuse of law which says that any person can be arrested in course of law. I have suggested two remedies, and my friend has already said that as soon as a man is arrested, the Government must inform him of the grounds of his arrest. This is a remedy that I have suggested and it will put a check upon the arbitrary exercise of power so far as that law is

[Prof. Raj Kumar Chakraverty.]

concerned. We know how these arrests are made and how persons are detained. It is our experience that the executive gets reports about certain persons from its watches and spies, who are not very responsible sort of people and the Government get these reports from their spies *ex parte*. The detenu or anybody else has no chance of testing those reports or verifying them and on the strength of those untested and unverified reports hundreds of people have been put into jail in many countries and sometimes grievous mistakes have been made in the case of arrests and detentions of innocent persons. My friend Mr. Dutta has cited some cases and I will tell you of one case which took place in 1917 in Bengal and which created a great sensation at the time. A lady by the name of Sindwala was suspected to have done something wrong or was likely to do something wrong. The police caught hold of this lady who was not really the suspected person. Evidently, there was a mistake. Some time later the mistake was found out and she was let off after a lot of trouble. So, there is a scope for mistakes and errors as my honourable friend, Mr. Nurul Amin, was saying a few minutes ago. In order to avoid such mistakes and errors, we suggest that the person arrested and detained should be told definitely the grounds of his arrest and detention and if there is any mistake or error the Government will get a chance to rectify it at an early date. But I shall not be satisfied with the decision of the executive only in this matter even if the mistake is corrected. The executive may think that there has been no mistake or error and the person concerned has been rightly arrested and detained. My submission is that the executive is not above all errors and mistakes and there must be somebody else to sit in judgment over them. Therefore, I have suggested that there must be something like a quasijudicial review of such cases periodically. It is not proper that the executive Government should be the prosecutor, the investigator and the judge at the same time. Let them by all means be the investigator and the prosecutor, but the judgment about the guilt of the arrested person or the supposed guilt of the arrested person should be left to somebody other than the executive. Therefore, my suggestion is about the periodical review of the cases of these detenus by a quasijudicial board.

Now, we must forget the dictum which is very handy in the hands of some members of the executive that once a detenu always a detenu. A detenu should not be detained indefinitely without trial. If there is a provision for this sort of a quasi-judicial review of cases, the dictum that "once a detenu always a detenu" shall not prevail. The Honourable Pirzada has just said in the course of his reply that if somebody is aggrieved, he may go to the High Court with a petition for *habeas corpus* and he may get his freedom. Sir, we have known of cases in recent years—and this has happened very recently in India—where people have gone to the High Court and the High Court has decided that so and so has been arrested and detained in the course of law or according to procedure of law and therefore the High Court cannot interfere. No doubt there is the valid right of the *habeas corpus*, but when a person is arrested according to law and when the Government can show there is nothing wrong so far as the arrest of the person is concerned, the High Court at once will wash its hands clean of it and will send the man away.

The Honourable Pirzada Abdus Sattar Abdur Rahman : There is nothing wrong in this.

Prof. Raj Kumar Chakraverty : Well, in every case the executive Government says that they have done it *bona fide*. It is therefore the *bona fides* of the executive Government.

The Honourable Pirzada Abdus Sattar Abdur Rahman : The High Court will decide the *bona fides* in the case of *habeas corpus* applications. If it is *mala fides* they have to release the person.

Prof. Raj Kumar Chakraverty : Sir, the High Court is not shown the grounds and the details of the case against the detenu ; that is the trouble, and the executive claims the privilege that they are not bound to give details and the reasons for the arrest of such persons. That is the difficulty.

My honourable friend, Mr. Nurul Amin, remarked that this is not a matter for discussion along with the fundamental rights ' laws and that this matter should be discussed when the Safety Act comes up for consideration in the House. I beg to differ from him. Well, there may be Safety Acts ; there have been Safety Acts in many countries. People have tried to bring in provisions like this ; they have failed. Therefore, Sir, when you are going to make these fundamental laws about freedom and liberty of persons, it is our duty to insert certain provisions here, so that there can be no arbitrary exercise of this power of detention and arrest by the executive.

Finally, Sir, I would make an appeal to my friends opposite. Let them remember that we are making these fundamental laws for all times to come, not only for ourselves but for our children and for our children's children. The world is moving very fast ; the conditions of today may not be the conditions of tomorrow ; those who are on the Treasury in any country in any Government, may not sit in the same position tomorrow or a few years after. So let us make a good law, let us make a complete law in any case. If we do not do that, whatever the reasons, the curse of our children will be on us.

Mr. President : Amendment moved :

" That the following provisos be added to clause (2) of Article 1 of Part II :

' Provided that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

Provided further that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an advisory board consisting of persons who are or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiry of the said period of three months that there is in its opinion sufficient cause for such detention. ' '

Now the amendments are under discussion.

***Shri Dharendra Nath Dutta** : Sir, I beg to move :

" That the following new Article 2A be added after Article 2, Part II :

' 2A. (I) No person who is arrested shall be detained in custody without being informed, as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.

(II) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an advisory board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention. ' '

Mr. President Sir, I should not inflict any speech over the matter because the matter has been discussed by my two esteemed friends, the previous speakers. But, Sir, I am sorry my Prime Minister, Mr. Nurul Amin, is absent. I want to give a reply to his observation that this is a matter of detail and so it can be taken up only when the Public Safety Act is introduced before the Constituent Assembly. That is not so, Sir. It is a matter which deals with the liberty of the human beings. Detention without trial should not be allowed to be made. We have allowed, Sir, detention without trial in certain cases and we are imposing restrictions upon the executive to bring forward a legislation like this. The executive can bring forward a legislation only in cases when the preventive detention shall be allowed but shall be allowed under certain circumstances. Sir, that is a matter which deals with the fundamental rights of the human beings and so it should be considered today, not at the timewhen the Public Safety Act is introduced in the Legislative Assembly.

[Shri Dhirendra Nath Dutta]

Then, Sir, the Honourable Mr. Pirzada has spoken of the *habeas corpus* cases. This has been taken, Sir, so far as I can see from the Indian Constitution. You know, Sir—you are aware—that after the Indian Constitution was passed many applications were made for *habeas corpus* which met with failure because under the Public Safety Act the executive has the power to detain a man and it had no obligation to communicate grounds of detention and therefore the *habeas corpus* applications were rejected. But after the Constitution was passed in India they have made a provision like the provision which is sought to be incorporated in the Constitution.

Then, Sir, you know under Article 22 the fate of the *habeas corpus* applications : many persons who had been detained were found to have been illegally detained and they were let off after the Constitution had been passed. So the argument advanced by the Honourable Mr. Pirzada does not hold good. Unless we make a provision like this the High Court will not be able to grant any relief ; the High Court will be able to grant relief only if you make a provision like this. Unless you do it the people will not be given their right. We are now dealing with the rights of the people—the human rights of the people—and this is an occasion when this should be introduced ; not, Sir, at the time when the Public Safety Act is being introduced in the Legislature.

Today, in the morning we were hearing from Begum Shah Nawaz that this Constitution that we want to incorporate regarding the fundamental rights is superior to any constitution in the world, but, Sir, I do not know whether I should refer to it but, Sir, I could refer to the Constitutions of our neighbouring States. Of course, we do not agree with all the Constitutions—there are defects also—but so far as this point is concerned it will give a better right to the people and I hope this House will have no objection to accepting the amendments that have been put forward by us.

With these few words I commend this motion to the acceptance of the House.

Mr. President : Amendment moved :

“That the following new Article 2A be added after Article 2, Part II :

- ‘2A. (I) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.
- (II) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—
- (a) an advisory board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention. ’’

Mr. President : All the amendments are now under discussion.

***Sardar Shaukat Hyat Khan :** Sir, I was greatly pained to hear the speeches delivered today, specially by those worthy gentlemen who seconded the Quaid-i-Azam in his efforts for the achievement of independence, that is the establishment of Pakistan. I am sorry because the Quaid-i-Azam in accepting the presidentship of this House had said that he was accepting that office because the Constituent Assembly did not belong to any one party or clique but was the voice of Pakistanis—a deliberative body in which everyone enjoyed equal status. He had told us that in the Assembly there was neither the League nor the opposition nor, for

*English translation of the Urdu speech.

that matter any Prime Minister ; everyone there was a member and no more. I see, however, that things now are just the opposite. The duty of this House is to frame the constitution of the country after careful deliberation and with honesty ; so that our future generations may lead their lives in a better and more independent manner. But I am sorry that certain Members have tried to make it a party question. I find that good amendments are tabled to disappear afterwards. Mr. Gazder's amendment was very good but it has also completely disappeared. It was such a fine amendment and he could make such a fine speech on it, but it has been withdrawn simply because his party did not countenance it. I fail to understand it. When we do not represent any party, why are such things being done ? Remember that the party of the pharaoh was drowned in the river, it was the Israeli party alone that was saved. This very party question sealed Mr. Gazder's lips so that he kept mum. So I would appeal to you not only in the name of the Quaid-i-Azam but also in the name of the Objectives Resolution, on which the whole Constitution is to be based, to rise above these party questions. Do not forget the 72 persons who, though defeated in the beginning, were victorious in the end.

We should, therefore, honestly draw up our constitution and an ideal of life which our children and future generations may well be proud of and say that their forefathers had not betrayed them.

Sir, I was pained to listen to the speech of my friend, the Honourable Mr. Pirzada, granting that he is a lawyer and his speech did credit to his legal acumen, granting that he is a Minister and his speech upheld the dignity of his high office, granting that he ought to have said all that he has said, I would still remind him of a few words of the Quaid-i-Azam, in view of his being a lawyer as well as the right-hand man of the departed leader.

Mr. President ; Is this all on your amendment ?

Sardar Shaukat Hyat Khan : This is on that amendment, I am a firm believer that no man's liberty should be taken away for a single moment without proper judicial inquiry.

***Sardar Shaukat Hyat Khan :** Sir, Pirzada Saheb has given a good account of himself both as a Pleader and a Minister but he has not taken into account the words of the Quaid-i-Azam which we still remember and honour as we did three years ago when he was in our midst. Even now we attach the same importance to his sayings as we did three years ago.

Professor Saheb is not present here. With regard to my amendment he remarked that I was given to repetition. He further blamed me for repeating the same thing over again. He is not perhaps aware of the fact that it is incumbent on a political worker not only to repeat a proposal for the preservation of civil liberties a thousand times but also to undergo all sorts of hardships our teacher, our leader, the Quaid-i-Azam has taught us to do our utmost for preservation of our country's independence. There is a world of difference between a political worker and a professor. A professor justifies a wrong thing but a political worker has to face the facts squarely.

I would, therefore, remind Pirzada Saheb and the Professor that we are framing the Constitution of an Islamic State and since this amendment relates to the Constitution they should give it proper consideration.

[Sardar Shaukat Hyat Khan]

Sir, I was saying that our amendment means that we want liberty and that we do not want to be at the mercy of any autocratic Government headed by either the Honourable Mr. Liaquat Ali Khan or Mr. Nurul Amin or Mr. Khuhro. We will not allow any enactment which may deprive us of our liberty. Pirzada Saheb has strongly supported it simply because he happens to be a Minister. Let me tell him that Mr. Khuhro may get an opportunity to be a Minister some day and Pirzada Saheb may find himself interned under this preventive detention measure. If it happens, he will find no place of shelter in Sind or anywhere else in Pakistan. It is through preventive detention, that you want to deprive us of our liberty. We do not want ourselves or our future generations to deprive of liberty. We do not want any Government, even if it is constituted by our own people, to be vested with such powers as may enable it to intern any innocent person, and finally dismiss his appeal on the ground that he has acted against public interest and has therefore been interned. Sir, you are following the laws framed by the British and the instructions left by them. This means a complete negative of freedom. You are occupying the Government benches only to use this preventive detention measures to intern your opponents, even though they are innocent. You will be justified to enforce this law or any other laws to this effect, in case of war or external aggression, and may then under this preventive detention measure intern anybody whom you like. But at present there seems to be no necessity of such an enactment. Unlearn all that you have learnt from the British and exercise the greatest care and honesty in framing the constitution of our country. Do not enact anything which may give you the power to intern any innocent person at your pleasure. If anything like this is enacted, the case of the accused must be submitted, within three months, to the High Court which has been appointed by you and which consists of your own men and its decision must be followed.

Mr. President : Is this all relating to your amendment ?

Sardar Shaukat Hyat Khan : Yes, it comes under fundamental rights of Islamic State.

Mr. President : Islamic State is not in your amendment. It is not mentioned there.

Sardar Shaukat Hyat Khan : Thank you, I am coming to that.

Mr. President Please come to that.

The Honourable Pirzada Abdus Sattar Abdur Rahman : How can he talk about Islamic State ; it is not included in his amendment ?

Sardar Shaukat Hyat Khan : You have not read it properly ; you better change your glasses.

The Honourable Pirzada Abdus Sattar Abdur Rahman . Please come to the amendment.

*Sardar Shaukat Hyat Khan: In peace time you may put the espionage Acts into force. You have got the Sedition Act. Why do you not put it into operation and guarantee the same liberty to the future generations which was enjoyed by people in the democratic days. You always exploit the name of Islam. Since you prate so much about Islam, would you tell me if the Islamic Democracy allows you to intern an innocent person, I am addressing my friend, Mr. Nurul Amin through you, Sir, as unfortunately he is not present in the House at this moment. Prime Ministers always believe in the technique of speaking out their minds to others and never listening to what others have got to say. Hence I regard it as somewhat improper to say anything in his absence. He has suggested that discussion on this matter may be postponed till the Preventive Legislation comes up before the Assembly. But I warn that men like Mr. Nurul Amin should not be given an opportunity to make schemes for depriving people of their liberty. I ask you, what you would say when the

future generations protest against this law. The amendment I have moved is in the interest of those who are now sticking to offices. It is just possible that these people may have to face a grim future ; in that case they may also be benefited by it. People in authority always think that they will never be deprived of their position. This amendment is moved so that they may not lose their heads and become autocrats. That is why human liberties are being provided after taking the human weaknesses fully into account. I would, therefore, like to say simply this that for God's sake do not make any such law for which your children may curse you. By making this law you have not only betrayed yourself but those words of Quaid-i-Azam which safeguarded human liberties. I myself have undergone preventive detention. May God save our children from that preventive detention which is being initiated here. If you will make any such law by means of which you can deprive people of their liberty, then you should remember that the people who have done away with the British regime may hurl you down into depths from where you may never be able to rise again.

Mr. Kamini Kumar Dutta : Sir, the object of the amendment has been very clearly stated in the proposal for the amendment and in the speeches made by the movers themselves. I shall not deal with that further. But one point seems to require clarification. The impression has been created that the remedies which are mentioned in the amendment can well be obtained in the law which will be passed regarding preventive detention. When there is insistence for the incorporation of this provision in the fundamental rights, that requires a clarification. There must be no confusion of ideas between the efficacy and the utility of fundamental rights in relation to the right of the State to pass any law. The very object of the fundamental rights being incorporated in a constitution is really to limit the right of legislation, because any legislation repugnant to the fundamental rights guaranteed in the constitution would be invalid. Therefore, this is a matter of vital importance to the liberties of the people—a matter of detention of a citizen by a State without trial ; not only without trial but without giving him any opportunity to explain the charges against him before he is actually put under detention. It is really an encroachment on the primary right of the people that no one should be condemned without being heard. Here the condemnation comes first and then only he is given an opportunity to explain that he is not guilty. Therefore, as it is a very extraordinary right which has been given in this Constitution in the foregoing clause that no person shall be deprived of life and liberty, save in accordance with law, it implies that a person can be deprived of his liberty if only the law provides for it. As it stands, it gives unfettered right to the State to make laws in respect of preventive detention. It is really to prevent that power of making legislation that this amendment is aimed at and this amendment is very simple and wants to safeguard only the elementary rights of the people. What are the safeguards which are aimed at ? First of all, the period of detention must be limited. Period of detention without trial must be limited at the inception and if it is to be extended, it can be extended only if after some sort of a judicial enquiry it is found that further detention is required. If that safeguard is not provided in the Constitution itself, then those who would be in power at that time and would be making laws, they may make law which may impose no limitation at all, but certainly everyone in the country demands that in the case of the deprivation of the liberty of anybody it should not be at the very inception of an unlimited period. It can only be of a limited period. The State should be given the right to exercise their power of detention for a limited period and it should be made subject to revision by some judicial body. So these amendments do not aim at more than this that at the inception no unfettered power should be given to the State just to detain a man without any limitation. It has been remarked and I must say I have a very high regard of

[Mr. Kamini Kumar Dutta]

the Honourable Minister who has said that we have got our relief in the *habeas corpus* application. No doubt, if initially in the detention there is a clear breach of the provision of law, in that case only the High Court can give relief to the aggrieved person but if in the constitution itself there is no limitation, no period is given for the detention, I doubt very much if any High Court under a *habeas corpus* application can give any relief. It can do so only if the High Court finds that there is a breach either of the constitution or of a clear provision of law which has provided for preventive detention. So the High Court cannot give any relief to the person aggrieved on account of preventive detention. But, at the same time we must not forget, and it is very rightly observed by all those who had spoken before me, that we are not making the law. Now we should know that those who are in power today, they are not going to be permanent factors all time to come. Each one of us should consider that the constitution is being made for the future and one of the objects of the constitution is to safeguard the very primary right of liberty of the people and it should be the aim of the constitution to see that unlimited power is not given to the State to deprive the people of their valued right—the right of liberty—under the pretence of law. Instances are not rare, Sir, when persons who were the real lovers of their country, were put under restraint under the pretence of law. Sometimes they did not see the light of the day from the dungeon in which they were placed. So, regarding these amendments that confusion must not be in our mind. Those in power later on may not make that law. What is the aim and object of prescribing fundamental rights. Sir, the object of incorporating fundamental rights in the constitution is this that law cannot be made abrogating these rights. The right of liberty of the people is one of the most valued rights and safeguard for its protection is most essential. Sir, if the State thinks that it is in the interest of the State to detain a person without any trial, let him be detained, but the period must be limited at the inception. He must be given notice of the facts of the charges against him and there must be a scrutiny of the charge by persons competent to enter into the reality or unreality of the charges. These are the elementary rights and safeguards which come within the category of fundamental rights and they should be incorporated in the constitution itself. These should not be left to the sweetwill of those who will be in power at the time of making the law regarding preventive detention.

Mr. Shahoodul Haque (East Bengal : Muslim) : Mr. President, Sir, we are dealing with fundamental rights. The Report which is before us is a very concise and brief report but it contains all the salient points that are necessary for enunciating the fundamental rights of the citizens of a State. Sir, I would like to ask my friends who have spoken at great length on these amendments which are matters of details whether detention of a person without trial is deprivation of his liberty ?

Prof. Raj Kumar Chakraverty : Yes, it is.

Mr. Shahoodul Haque : What, it is not so ?

Prof. Raj Kumar Chakraverty : It is so.

Mr. Shahoodul Haque : Well, if it is so, provision is already there that the liberty, life and property of no citizen in the State of Pakistan would be deprived except in accordance with law. The framers of law will be these people who are sitting here and discussing these questions before this House who may provide necessary safeguards while framing the laws.

Prof. Raj Kumar Chakraverty : No, no.

Mr. Shahoodul Haque : Or your successors. Now, Sir, I for one do not see any reason why these amendments should be accepted nor am I very much enamoured of the Indian Constitution of which so much has been spoken. Undoubtedly the Indian Constitution is a very voluminous and verbose thing ; we are not going to make a constitution on the model of the Indian Constitution. Our Constitution will be small and concise. Sir, I believe

that because that is going to be short and concise, that is why all these details have not been put in the fundamental rights. Fundamental rights have been enunciated here very clearly though succinctly in several articles. So I am disposed to consider these amendments quite unnecessary. Sir, if we accept amendments like these, a wife may come and file a petition for *habeas corpus* saying that she has every right to enjoy the company of her husband and the State has no right to detain him. All these things cannot be put in the fundamental rights. With these words, Sir, I oppose these amendments.

The Honourable Mr. Abdul Hamid : Mr. President, Sir, all these amendments proceed on the assumption that the majority either in the Centre or in the Provinces are not going to be fair, just and considerate. Sir, Honourable Members who are moving these amendments had suffered under the rule of an alien Government. Sufferings under the alien Government are responsible for these amendments. But, here, the Government of the future in Pakistan—whether in the Centre or in the Provinces—is going to be the administration by their own people. If we proceed on the assumption that the majority of the people are not going to be fair and just in future, then we can despair of Democracy.

Prof. Raj Kumar Chakraverty : Can you give a guarantee?

The Honourable Mr. Abdul Hamid : Sardar Shaukat Hyat Khan, who appears to be against the Premier complained that Premier disappears after making speeches. I now find Mr Shaukat has disappeared after making a scurrilous speech so that he may not have to listen to what others may have to say. He stated that he wanted to save the people from the majority rule. In a democratic constitution you are asking for the impossible. Majority must rule. By opposing this measure you are going to give unlimited liberty to intelligent people to commit acts against the State and yet succeed in remaining outside the purview of law. Sir, from the eminent lawyer in front of me I did not like to hear that *habeas corpus* Act is not a magna Charta of individual liberty. This is for the first time I have come to know that *habeas corpus* does not protect liberty for the individual. It is found in every Constitution and regarded as Magna Charta and the legal luminaries sitting in opposition know full well. The powers given under this Act will be used on rare occasion. Can any member here oppose its use when the Pakistan State is faced with war or when Pakistan is faced with grave emergency? If they do so, they will be betraying their trust. On this view of the matter, Sir, I hope that Honourable Members will not press their motions. They should not labour under the impression that the alien Government is going to rule them in future. They will have as much voice in the Government as any other member. Any Government that wants to utilise these powers of detention without trial, they may utilise it for a year or so. They will be kicked out by the voters themselves from this advantageous position if they misuse their power. So, there need not be lurking apprehension in the minds of the Honourable Members that individual liberty of the citizen of Pakistan will be jeopardised if such a provision is made. I think the Honourable Members of the House will agree with me that the fundamental rights provided in this Constitution is a great advance compared with many Constitutions of the world. I support the remark made by one of the members of the Fundamental Rights Committee that they have given consideration and provided for all emergencies. Sir, I therefore do not see eye to eye with the Members moving the amendments. In fact, three of the amendments are identical. Only Mr. Bhupendra Kumar Dutta had extended two more provisos in his amendment No. 8, but that is also linked with the previous provisions. Sir, in framing the Constitution and not only in accepting fundamental rights, we should proceed on the supposition that the human beings are innately good and they will behave as such, whether they are in a majority or in a minority.

Mr. President : Now, I am putting the amendment.....

The Honourable Pirzada Abdus Sattar Abdur Rahman. There are two other amendments moved and I would like to say a few words.

Mr. President : Will it not be better if you speak after adjournment? There is not much time left now.

The Honourable Pirzada Abdus Sattar Abdur Rahman : I will be brief in my remarks. I shall finish before *Maghrib* prayers.

Mr. President : You may proceed.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, the Members who have advocated these amendments have tried to make out as if the Fundamental Rights Committee in proposing the present Article have had no regard for the liberty of the citizens of Pakistan. They have tried to show as if anybody could be put in jail under the new Constitution and there will be no safeguards for him, and that is what Mr. Shaukat Hyat Khan while arguing in support of this amendment tried to show. I might, I think, make it clear that this impression that is being created is totally wrong. On the contrary the fundamental rights that have been proposed guard against any encroachment upon the liberty of persons as jealously as any one of them would desire it to be. They themselves while moving these amendments, Sir, have conceded that in certain cases, it might become necessary to detain a person without trial. In none of the amendments proposed by them, as is significant in the amendment proposed by Mian Iftikharuddin, have they said that there is to be no detention without trial. They have themselves admitted it in their amendments and while speaking they have conceded this that the State should have a right to detain persons without trial for security purposes in certain matters. It is the abuse of this power that they want to guard against by pressing these amendments. Therefore, basically, there is nothing wrong in proposing by the Fundamental Rights Committee that the liberty of persons will be subject to any legislation that might be enacted later on and therefore now it becomes only a circumscribed problem whether the provision that exist in the fundamental rights, at present, is sufficient guard against the abuse of legislative powers subsequently to be given to the legislature. That is the point, Sir, and I might correct Mr. Kamini Kumar Dutta when he said that while hearing an application for a writ of *habeas corpus* the High Court would only look at the point if the order is illegal or not. That is not correct. If the order is illegal, then the High Court has got powers because it is not passed under any law—it may be under the Safety Act. When it is not under a law at all, then any court might interfere in that case. The question of *habeas corpus* comes in when the exercise of power of detention is under any legal provision, but the legal provisions have been misused not for a *bona fides* purpose, but for the *mala fides* purpose. In that case the High Court will interfere and grant release to him. Therefore, you have got safety from both points of view. When the order is illegal, not passed under any law and not within the four corner of law, you get the release from the Court. The High Court have that right of going into the question of *mala fides* and *bona fides* and if they find that it is *mala fides* use of the law, then they release the person. That is what you yourselves have conceded by making these amendments that in the case of a *bona fides* cause, the person might be detained but if there is no *bona fides* cause, then the person may not be detained. Moreover, we have said that after three months, the High Court or anybody who is qualified to be a Judge of the High Court might examine the case and recommend if the detention is *mala fides* or *bona fides* and that is exactly what the High Court will do and therefore as I have said in my earlier speech there is sufficient safeguard. It is only the question of extent—is this sufficient or is this not sufficient. These are the details that you want to provide. The case of persons under detention can be examined under the *Habeas Corpus* Act. You need not wait for even three months. You can immediately go to the High Court and demand action under the *habeas*

corpus Act which if properly used by the courts of law is sufficient safeguard against any legislative measure that might be passed. The writ of *habeas corpus* transcends over laws that might have been passed or that may be passed in future at any time by the legislature and when the safeguards exist, it is no use providing all these details.

I am sorry for the Honourable Sardar Shaukat Hyat Khan, who was so loud in advocating the ideals of Quaid-i-Azam and wanted to show as if he was the only person who had respect for those ideals and as if this side had no consideration at all for them. I might tell him that these are the views about the personal liberty of everybody. He cannot be the sole custodian of those views. It is most inappropriate to refer to all these things here because, as I have already explained, this question does not arise. There is no question of anybody being deprived of his liberty. It is sufficiently guarded, as I have already said, by the writ of *habeas corpus* and the misconception that some of the Members have that it is only by the violation of the law that a man can be released is incorrect. In *mala fide* cases also he can be released. Therefore, I do not consider that these amendments will in any way improve the proposal of the Fundamental Rights Committee which is complete in itself and guarantees the liberty of a person fully and completely in Pakistan.

Mr. President : I will now put the amendments. The question is :

“ That after clause (2) of Article 1 of Part II, the following be added :

- (a) No person shall be detained without trial except in case of war.
- (b) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.
- (c) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.”

The motion was negatived.

Mr. President : The question now is :

“ That the following proviso be added to clause (2) of Article 1 of Part II :

“Provided that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the specific grounds on which the order has been made and thereafter shall afford him the earliest opportunity of consulting a legal practitioner of his choice and of making representations against the order.

Provided also that no law providing for preventive detention shall authorise the detention of a person for longer than three months unless an advisory board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiry of the said period that there is in its opinion sufficient cause for such detention.

Provided further that a new board of the same nature shall re-examine and pronounce upon the case in the event of a fresh order for the continuation of detention which shall not hold good for longer than a period of six months.

Provided also that a person held in such preventive detention shall receive treatment in conformity with his health and hygienic and intellectual needs as well as habits and status in life and in accordance with rules to be framed in this behalf by the Legislatures, Provincial or Central, as the case may be. Provision shall also be made for the maintenance of his family and for the proper protection of his financial interests.”

Mr. President : Division will be taken after the *Maghrib* prayers.

The House stands adjourned for *Maghrib* prayers for Fifteen Minutes.

The Assembly then adjourned for *Maghrib* prayers till Thirteen Minutes Past Seven of the Clock, in the Evening.

The Constituent Assembly re-assembled at Thirteen Minutes Past Seven in the Evening after *Maghrib* prayers, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

INTERIM REPORT OF THE COMMITTEE ON FUNDAMENTAL RIGHTS AND ON MATTERS RELATING TO MINORITIES—(continued)

Mr. President : The question before the House is :

“ That the following provisos be added to clause (2) of Article 1 of Part II :

‘ Provided that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the specific grounds on which the order has been made and thereafter shall afford him the earliest opportunity of consulting a legal practitioner of his choice and of making representations against the order.

‘ Provided also that no law providing for preventive detention shall authorise the detention of a person for longer than three months unless an advisory board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiry of the said period that there is in its opinion sufficient cause for such detention.

Provided further that a new board of the same nature shall re-examine and pronounce upon the case in the event of a fresh order for the continuation of detention which shall not hold good for longer than a period of six months.

Provided also that a person held in such preventive detention shall receive treatment in conformity with his health and hygienic and intellectual needs as well as habits and status in life and in accordance with rules to be framed in this behalf by the Legislatures, Provincial or Central, as the case may be. Provision shall also be made for the maintenance of his family and for the proper protection of his financial interests., ”

The Assembly then divided :

AYES—14

- | | |
|--------------------------------------|----------------------------------|
| 1. Mr. Prem Hari Barma. | 8. Mr. Birat Chandra Mandal. |
| 2. Shri. Dhirendra Nath Dutta. | 9. Mr. Bhabesh Chandra Nandy. |
| 3. Shri Kamini Kumar Dutta. | 10. Mr. Harendra Kumar Sur. |
| 4. Prof. Raj Kumar Chakraverty. | 11. Mr. Akshay Kumar Das. |
| 5. Shri. Sri Chandra Chattopadhyaya. | 12. Mian Muhammad Iftikharuddin. |
| 6. Mr. Bhupendra Kumar Dutta. | 13. Sardar Shaukat Hyat Khan. |
| 7. Mr. Jnanendra Chandra Majumdar. | 14. Seth Sukhdev. |

NOES—35

- | | |
|--|--|
| 1. Mr. A. M. A. Hamid. | 20. The Hon'ble Mr. Abdul Hamid. |
| 2. Mr. Abdullah-al Mahmood. | 21. Syed A. B. M. Husain. |
| 3. Maulana Md. Abdullah-el Baqui. | 22. Mr. Abdul Monem Khan. |
| 4. Maulana Md. Akram Khan. | 23. Chowdhury Moazzem Hussein (Lalmia) |
| 5. Moulavi Ebrahim Khan. | 24. Begum Jahan Ara Shah Nawaz. |
| 6. The Hon'ble Mr. Fazlur Rahman. | 25. Chaudhri Ali Akbar Khan. |
| 7. Mr. Shahoodul Huque. | 26. Shaikh Sadiq Hasan. |
| 8. Dr. Istiaq Husain Qureshi. | 27. Mr. Ghulam Bhik Nairang. |
| 9. The Hon'ble Mr. Liaquat Ali Khan. | 28. Mr. Abdul Wahid Khan. |
| 10. The Hon'ble Mr. Mafizuddin Ahmad. | 29. The Hon'ble Khan Sardar Bahadur Khan. |
| 11. Dr. Mahmud Husain. | 30. The Hon'ble Pirzada Abdus Sattar Abdur Rahman. |
| 12. The Hon'ble Dr. A. M. Malik. | 31. Mr. M. H. Gazder. |
| 13. Mr. Murtaza Raza Choudhury. | 32. Mr. M. A. Khuhro. |
| 14. Mr. Nur Ahmed. | 33. Mr. Fazl-i-Hussan. |
| 15. The Hon'ble Mr. Nurul Amin. | 34. Jam Sahib Mir Ghulam Qadir Khan, of Las Bela. |
| 16. Mr. Serajul Islam. | 35. Mr. B. L. Rellia Ram. |
| 17. Mr. Asadullah. | |
| 18. The Hon'ble Khwaja Shahabuddin. | |
| 19. Begum Shaista Suhrawardy Ikramullah. | |

The motion was negatived

Mian Muhammad Iftikharuddin : Mr. President, may I know your ruling on my request that my amendment—Amendment No. 7—should also have been voted upon and Division taken. I have already made that request and the President was pleased to say that he will let me know his decision after this Division.

Mr. President : Mian Sahib, I have looked into the matter. First of all, I may point it out to the House that the rules of the Constituent Assembly do not make any provision whatsoever about Divisions. We are following the general practice of taking Divisions. Therefore, as a matter of right no Member can say that he is entitled to a Division. That is point No. 1. Secondly, so far as your motion is concerned when I put it before the House there was no voice whatsoever in favour of the motion. I said "Those in favour say 'Aye'" "but there was absolute silence. Then I said "Those against it, say 'No'" and there were a large number of voices. Then, when I was going to declare the result, at that stage Mian Iftikharuddin and I think some other Members also shouted "Ayes have it". This was technically incorrect, because there were no Ayes at all. There ought to have been voices of "Ayes—at least a single voice to support this demand. There having been no voice in favour of the motion when I put it in the first instance, no one could demand that the Ayes have it; there were no Ayes at all. But still it was shouted that the Ayes have it; therefore I declared the result. After I have declared the result it cannot be re-opened. Here I think I may quote a precedent, which is not the precedent of Constituent Assembly but of a Legislature. It is like this :

"The President declared that "Ayes have it" and there being cries of "No" the President said the volume in favour of Ayes is so preponderating that I do not think a division is necessary."

In this case there was no voice whatsoever in favour of the amendment. In these circumstances, I think the matter cannot be re-opened.

Mr. President : Then I put the next motion. The question before the House is :

"That the following provisos be added to clause (2) of Article 1 of Part II :

Provided that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

Provided further that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless any advisory board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiry of the said period of three months that there is in its opinion sufficient cause for such detention."

The motion was negatived.

Mr. President : Now the question before the House is :

"That the following new Article 2A be added after article 2 of Part II :

'2A. (I) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall be denied the right to consult, and to be defended by a legal practitioner of his choice.

(II) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an advisory board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention."

The motion was negatived.

Mr. President : Now the question is :

That Article 1 of Part II stand part of the Report.

The motion was accepted.

ARTICLE 2, PART II

Mr. Bhupendra Kumar Dutta : Sir, I beg to move :

“That in Article 2 of Part II, after the word ‘done’ the following be added :

‘Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.’”

Sir, the purpose of the amendment is obvious. It is only a necessary supplement to the original provision and it is taken from Article 11 (2) of the Declaration of Human Rights by the United Nations Organization.

Mr. President : Amendment moved :

“That in Article 2 of Part II, after the word ‘done’ the following be added :

‘Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.’”

The Honourable Mr. Abdul Hamid : Sir, I do not think that this amendment is at all necessary. Clause 2 says that no person shall be punished in respect of an act the doing of which was not punishable at the time when it was done. The amendment says that heavier punishment shall not be imposed than what was provided at the time of commission of the act. This amendment seeks to impose restriction on legislative right of the House. Already there is provision that if no penalty is imposed before the passing of the law then no penalty should be imposed after that. As there was no penalty before the passing of the law for that particular offence so he cannot be punished if he committed that offence before the enactment of the law. Now when the law is changed you cannot punish the person under the old law as it has been abolished and ceased to exist and under the new law you cannot punish as you have enhanced the punishment. So the criminal would go without punishment. In view of this fact it is not proper to accept an amendment of this sort. Moreover I have said that section 2 has to deal with a thing which was not an offence at any time when the act was committed. Here it deals with an offence, the sentence alone is to be increased. I think that is an absurd amendment and after the honourable mover has listened to what is said about it he will withdraw the amendment.

The Honourable Mr. Fazlur Rahman : It is out of order.

Mr. President : Let me put it to the House. The question is :

“That in Article 2 of Part II, after the word ‘done’ the following be added :

‘Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.’”

The motion was negatived.

Mr. President : The question is :

“That clause 2 of Part II stand part of the Report.”

The motion was adopted.

ARTICLE 3 OF PART II

Mr. Bhupendra Kumar Dutta : Sir, I beg to move :

“That in Article 3 of Part II, the comma and words appearing after the word ‘suspended,’ be omitted.”

Sir, I believe that these words are derogatory to the sense of responsibility of the High Court. Therefore I move for their deletion.

Mr. President : The question is :

“That in Article 3 of Part II, for all words occurring after the word ‘suspended’ the words ‘except in case of war’ be substituted.”

The motion was negatived.

*Mian Muhammad Iftikharuddin : I beg to move :

" That in Article 3 of Part II, for all words occurring after the word ' suspended ' the words ' except in case of war ' be substituted."

I need not make a long speech on this. The point is very clear that the *right* of *habeas corpus* right which has been won by peoples of the world after centuries of struggle should not be taken away so frivolously. On the contrary even up to 1950 nobody has heard of this way of *habeas corpus* or the spirit behind it, I think a State which I thought rightly boasts of giving a new type of constitution to the world should not have given this idea up even if it had been there already. The only emergency that we can take seriously is the emergency of war or impending war but otherwise you will agree with me as I have argued earlier that it is very easy for a Government in power to say that there is internal danger and anything can be considered as internal danger and they may thereby arrest people. In fact it has happened already in the last three years. People have been arrested like that and it proved that the Government, let alone others, our own Government, can go a wrong way and therefore, Sir, I think that my amendment which I have suggested earlier in the beginning of the speech may be accepted.

Mr. President : Amendment moved :

" That in Article 3 of Part II, for all words occurring after the word ' suspended ' the words ' except in case of war ' be substituted."

Before I put the amendment to the House I should make a statement. I am extremely sorry that I gave a wrong information to the House. I had informed the House that the rules do not provide for any Division. As I was given to understand that that was the position so I made that statement. But I find that there is a rule providing a division if a division is demanded and then a division is to take place.

Prof. Raj Kumar Chakraverty : There are further amendments on this clause.

Mr. President : Amendments of allied nature.

Prof. Raj Kumar Chakraverty : Yes, Sir, the next two.

Mr. President : Let me dispose this of. The question is :

" That in Article 3 of Part II, for all words occurring after the word ' suspended ' the words ' except in case of war ' be substituted."

The Assembly then divided :

AYES—15

- | | |
|--------------------------------------|--|
| 1. Mr. Prem Hari Barma. | 9. Mr. Bhabesh Chandra Nandy. |
| 2. Shri Dhirendra Nath Dutta. | 10. Mr. Harendra Kumar Sur. |
| 3. Shri Kamini Kumar Dutta. | 11. Mr. Akshay Kumar Das. |
| 4. Prof. Raj Kumar Chakraverty. | 12. Mian Md. Iftikharuddin. |
| 5. Shri Sris Chandra Chattopadhyaya. | 13. Sardar Shaukat Hyat Khan. |
| 6. Mr. Bhupendra Kumar Dutta. | 14. Khan Iftikhar Husain Khan of Mamdot. |
| 7. Mr. Jnanendra Chandra Majumdar. | 15. Seth Sukhdev. |
| 8. Mr. Birat Chandra Mandal. | |

Noss—37

- | | |
|--|--|
| 1. Mr. A. M. A. Hamid | 21. The Hon'ble Mr. Abdul Hamid. |
| 2. Mr. Abdulla-al Mahmood. | 22. Syed A. B. M. Husain. |
| 3. Maulana Md. Abdullah-el Baqui. | 23. Mr. Abdul Monem Khan. |
| 4. Maulana Md. Akram Khan. | 24 Chowdhury Moazzem Hossein (Lalmia). |
| 5. Mr. Azizuddin Ahmad. | 25. Begum Jahan Ara Shah Nawaz. |
| 6. Moulavi Ebrahim Khan. | 26. Chaudhri Ali Akbar Khan. |
| 7. The Hon'ble Mr. Fazlur Rahman. | 27. Shaikh Sadiq Hasan. |
| 8. Mr. Shahoodul Haque. | 28. Mr. Ghulam Bhik Nairang. |
| 9. Dr. Ishtiaq Husain Qureshi. | 29. Mr. Abdul Wahid Khan. |
| 10. The Hon'ble Mr. Liaquat Ali Khan. | 30. The Hon'ble Khan Sardar Bahadur Khan. |
| 11. The Hon'ble Mr. Mafizuddin Ahmad. | 31. The Hon'ble Pirzada Abdus Sattar Abdur Rahman. |
| 12. Dr. Mahmud Husain. | 32. Mr. M. H. Gazder. |
| 13. The Hon'ble Dr. A. M. Malik. | 33. Mr. M. A. Khuhro. |
| 14. Mr. Murtaza Raza Choudhury. | 34. Sardar Bahadur Nawab Mohammed Khan Jogeza. |
| 15. Mr. Nur Ahmed. | 35. Mr. Fazl-i-Husain. |
| 16. The Hon'ble Mr. Nurul Amin. | 36. Jam Sahib Mir Ghulam Qadir Khan of Las Bela. |
| 17. Mr. Serajul Islam. | 37. Mr. B. L. Rallia Ram. |
| 18. Mr. Asadullah. | |
| 19. The Hon'ble Khwaja Shahabuddin. | |
| 20. Begum Shaista Suhrawardy Ikramullah. | |

The motion was negatived.

Mr. Bhupendra Kumar Dutta : Sir, I beg to move :

“That in Article 3 of Part II, for the comma and words appearing after the word ‘suspended’ the following be substituted :

‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or law’.”

Sir, my amendment is self-explanatory and I request that it may be accepted.

Mr. President : Amendment moved :

“That in Article 3 of Part II, for the comma and words appearing after the word ‘suspended’ the following be substituted :

‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or law’.”

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I think this amendment is absolutely unnecessary, because all the fundamental rights will be enforceable. It is no use saying it, because that is what it really means when you say that these will be the fundamental rights of citizens. They will be enforceable automatically. So this amendment is absolutely unnecessary.

Mr. President : The Question is :

“ That in Article 3 of Part II, for the comma and words appearing after the word ‘ suspended ’ the following be substituted :

“ Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or law.”

Mr. Bhupendra Kumar Dutta : Sir, I withdraw this amendment.

Mr. President : I think there is no objection.

The amendment was, by leave of the House, withdrawn.

Mr. Bhabesh Chandra Nandy : Sir, I beg to move :

“ That in Article 3 of Part II, the words ‘ or other grave emergency ’ be omitted.”

Sir, if I read the whole para. it comes to this :

“ The right of a citizen to move the High Court for a writ of *habeas corpus* shall not be suspended, except in case of an external or internal threat to the security of the State or other grave emergency.”

My proposal is for deleting the last portion “ or other grave emergency ”. Sir, you will see that in these few words “ except in case of an external or internal threat to the security of the State ” all possible threats and all possible emergent conditions are included. The last portion “ or other grave emergency ” is redundant. If it be there it leads to a great margin of public liberty being jeopardized, because this is a vague expression. If that expression be there in the fundamental rights, then there remains the possibility of its being misused by an unscrupulous executive authority. On the other hand, the words “ external or internal threat to the security of the State ” are sufficient to cover all emergent situations. So, I suggest that we should not make it vague. We can safely omit this expression. If we include this, just on reading this, suspicion comes to everybody’s mind that authorities are very much hesitant or shy of giving the *habeas corpus* right to the public. It is no good making such a vague limitation to this right. The expression “ internal and external threat ” covers the point. This portion may be safely deleted without running any risk to the safety of the State—internal or external. So, I propose to the House that the amendment may be accepted.

Mr. President : Amendment moved :

“ That in Article 3 of Part II, the words ‘ or other grave emergency ’ be omitted.”

The Honourable Mr. Nurul Amin : Mr. President, Sir, I think nobody in this House will disagree with the possibility of a grave emergency in the life of a nation. If that is accepted, Sir, that there may be occasions on which grave emergency may arise, then in that case I do not see any objection to suspend the right of *habeas corpus* in that circumstance, because we have already provided that in the case of external and internal threat to the security of the State that right can be suspended. On the other hand it has been said by the honourable the mover of the motion that an irresponsible executive may abuse this power. Sir, it has not been provided in this recommendation who will exercise this power. The power to suspend the right of *habeas corpus* has not been given by this Article to the executive. It may be given to the Parliament. So, the way in which this has been expressed in the Article, does not suggest that this right is to be exercised by the executive authority. This right may be exercised by some other authority, namely, Parliament. So, Sir, at the time when this power is given to some authority at that time we will discuss whether that should be given to the Head of the State or to the executive or to the Parliament. That is the time when this sort of discussion may take place. On this ground, Sir, I oppose this motion and suggest that the expression “ or other grave emergency ” should be retained.

Shri Kamini Kumar Dutta : Sir, I rise to support the amendment. Indeed, Sir, the expression “ grave emergency ” has not been defined anywhere in this report and if this expression is retained it will lead to various complications.

[**Shri Kamini Kumar Dutta**]

If it is to be retained, it ought to be retained with a very clear enunciation—"or other grave emergency, if so declared by the Head of the State." Otherwise, this will lead to difficulty. What is a grave emergency and who is to decide it? There is no definition of that. Either there must be some definition of what is a grave emergency or the expression should be "or other grave emergency, if so declared by the Head of the State."

***Shri Dharendra Nath Dutta** : Mr. President, Sir, the point at issue that has been raised by my friend is this that the words "or other grave emergency" are redundant in view of the expression "external or internal threat to the security of the State." The Honourable the Prime Minister of Eastern Bengal has raised this question that the question of grave emergency can be determined either by the Parliament or by the Central Legislature or by the Head of the State. This is not here. But we are not concerned with that. The point at issue is whether there is any necessity for these words in view of the expression "internal and external threat to the security of the State." By "external threat" he evidently means war and by "internal threat" is meant threat to the security of the State by a rebellion in the country. There is no further scope for a grave emergency. In view of these two expression preceding, our submission is this that the words "or other grave emergency" are redundant and may lead to complications specially in view of the fact that there is no definition of that and therefore in view of the presence of this expression—internal and external threat to the security of the State—the words "or other grave emergency" should be omitted.

The Honourable Pirzada Abdus Sattar Abdur Rahman : The Honourable Member who has just spoken seems to think that the expression "external or internal security of the State" includes everything. This is wrong. There might be other emergencies also which might arise later on and therefore this is a general provision. If there is a grave emergency enough to cause threat to the security of the State, certainly in that case there is no harm if the *habeas corpus* provision is suspended. Therefore, Sir, I do not see any harm in retaining these words which are safeguard if there is a grave emergency. Therefore, Sir, I oppose the amendment.

Mr. President : The question is :

"That in Article 3 of Part II, the words 'or other grave emergency' be omitted.

The motion was negatived.

Prof. Raj Kumar Chakraverty : Mr. President, Sir, I beg to move :

"That in Article 3 of Part II, for the words 'other grave emergency' the following be substituted :

'In cases of rebellion or invasion when the public safety may require it.'

Sir, I have borrowed these words from the Constitution of the United States of America. And, anybody who cares to examine those words in that constitution will find that the words "or other grave emergency" do not occur there. Therefore, Sir, if we care for the constitution of other civilized countries, I think this is a matter which should be considered in this House in all seriousness.

Sir, the . . .

The Honourable Mr. Nurul Amin : What are the words ?

Prof. Raj Kumar Chakraverty : The words are—

"in case of rebellion or invasion when the public safety may require it."

These are the words of the American Constitution. I would have been very glad if this Article 3 were not in the Fundamental Rights at all. I have read some other constitutions and I find that this provision about the suspension of the *habeas corpus* is not in those constitutions except in the American constitution.

*Speech not corrected by the Honourable Member.

There is no necessity for the inclusion of this provision here. It is an English law which we have inherited from English Jurisprudence and it has become, in the words of Mr. Abdul Hamid, a Magna Charta for the people of the world. Therefore, this law is there and the High Court can always interfere whenever an application under this provision of the *habeas corpus* is made to it. Well, I do not think the following words are at all necessary, viz., that except in the case of external or internal threat to the security of the State or other grave emergency. If in the country, there is an external or internal threat to the security of the State, certainly the High Court will have the wisdom and they will have foresight to suspend the *habeas corpus* and they will not certainly grant the petition of any person for the *habeas corpus*—High Court Judges are not so many fools. Whenever they know that emergency has been declared they will not certainly entertain the petition of any citizen for the writ of *habeas corpus*. So this clause is absolutely unnecessary, but when it is the case, it is our duty to make this clause as free from objections as possible. Therefore, Sir, I have suggested that instead of the word "grave emergency" let the definite words be there, namely, "in case of rebellion or invasion when the public safety may require it." Now, it is very difficult for me to conceive of grave emergencies other than those suggested in the amendment. Well, there is the case of "internal threat" and there is the case of "external threat" and there is a case of actual rebellion and there is also provision for covering a case of actual invasion. Well, to add the words "grave emergency" after all this, is to make the things more complicated and in the hands of an irresponsible Government these words may be utilised for curtailing the liberty of citizens. Sir, it has been pointed out by the Honourable Mr. Pirzada in a previous speech that the writ of *habeas corpus* is a very valuable writ and any citizen whose liberty is curtailed can go to the High Court for redress. Therefore he objected to the amendments that we moved previously about certain provision regarding detenus. Now, the little right and justice that a citizen can expect from the High Court as regards this *habeas corpus* is sought to be taken away from him by this clause. So, where is the remedy for a citizen, if a legislature wants to deprive him of his rights in the name of grave emergency?

The Honourable Mr. Nurul Amin has pointed out that this emergency will be declared evidently by the Legislature.

The Honourable Mr. Nurul Amin : No, that I have not said.

Prof. Raj Kumar Chakraverty : And not by the executive.

The Honourable Mr. Nurul Amin : That has not been suggested as to who will declare it.

Prof. Raj Kumar Chakraverty : I take it, Sir, that it, will be declared either by the Head of the State or by the Legislature. My objection is that sometimes in these days of party Governments and in these days when passions and prejudices run high, there is just a chance that these words "grave emergency" may lead to what is called the tyranny of the majority party in the Legislature. Therefore, it is better that these words "grave emergency"—these loose words—should not be there at all. It may give a handle to the majority party to exercise the tyranny of the majority. Well, I am quite willing to make provision for the difficulties of the State when there will be internal or external threat or when there will be actual rebellion or invasion, but in addition to that, there is no necessity for inserting these words "grave emergency" just to make the matter more complicated which is likely to curtail the liberties of citizens. With these words I commend my amendment to the acceptance of the House.

Mr. President : Amendment moved :

"That in Article 3 of Part II for the words "other grave emergency" the following be substituted :

'In cases of rebellion or invasion when the public safety may require it.'

The Honourable Mr. Abdul Hamid : Sir, I do not understand how all the Honourable Members including Prof. Raj Kumar Chakraverty can come forward with an amendment of this nature. It says that the words "in case of rebellion or invasion" be substituted in place of other "grave emergency." Both rebellion and invasion come under the connotation of external and internal threat to the security of the country. It cannot be substituted for the words "other grave emergency". Now while talking about the grave emergency he has defined it by saying "external and internal threat". I think he is merely amplifying what external or internal threat is? Is not a rebellion an internal threat to the security of the State? Is not invasion an external threat to the State? If rebellion is not an internal threat to the State then what it is? I do not think he can say that they do not come within the meaning of internal and external threat to the State."

As regards "other grave emergency" it is not either internal or external threat to the security of State. There are many widespread troubles which cannot be called either rebellion or any external invasion, but emergency will be there. Therefore such special power is necessary to stop the disrupting elements from committing mischief.

Sir, I oppose the amendment.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, I oppose this amendment on the grounds that I have already urged in connection with the previous amendments of similar natures.

Mr. President : The question is:

"That in Article 3 of Part II for the words 'other grave emergency' the following be substituted:

'In cases of rebellion or invasion when the public safety may require it..'

The amendment was negatived.

Mr. President : Now, there is no other amendment.

The Honourable Mr. Nurul Amin : Sir, it is already 8-10 P.M. and some of the Honourable Members have to attend the feast. So, I would request the Honourable President to rise tonight. We have done a greater portion of the work.

The Honourable Mr. Fazlur Rahman : Why not finish it now.

Mr. President : Now, I am putting Article 3 of Part II to vote.

The question is:

"That Article 3 of Part II stand part of the Report."

The motion was adopted.

Prof. Raj Kumar Chakraverty : My point, Sir, is this that we have done enough work tonight and we never knew that we would have to sit up to 9 or 10 o'clock at night, otherwise we would have made arrangement according to the programme. We have been taken unawares. So, you will kindly excuse us today and you can announce for our future guidance that we shall sit up to 10 or 11 o'clock.

ARTICLE 4 OF PART II

The Honourable Pirzada Abdus Sattar Abdur Rahman : There is no amendment on Article 4 and we might finish that.

Mr. President : As there is no amendment to Article 4 I will put it to the House. The question is:

"That Article 4 of Part II stand part of the Report."

The motion was adopted.

Mr. President : The question now is up to what time I should adjourn the House on Friday next.

The Honourable Mr. Nurul Amin : Next Friday is a holiday.

The Honourable Mr. Liaquat Ali Khan : Sir, it has been noticeable that every Member of the House is most anxious to proceed with the business of the framing of the Constitution, but I am afraid it will only remain a pious hope unless we devote more time to it. I know it causes some inconvenience to some of the Honourable Members because during the last three years we have got used to very light work. Now that we are engaged on the framing of the Constitution, I might point out that more time will be required and I have no doubt that every Honourable Member is prepared to sit for as long as is necessary.

Now, Friday is a holiday as Mr. Nurul Amin has pointed out. But I think that unless we really sit for some time on Friday, I am afraid we will not be able to complete even a fraction of the work which is before us. I understand that our honourable friends of the Congress Party are anxious to get back to their homes for the Puja holidays which begin from the 16th of this month. So, really speaking, we have got very few days left and we have plenty of work to do yet. I suggest that Mr. Nurul Amin can have a complete holiday on Sunday and half holiday on Friday. (A voice : And also the feast !) As regards the feast, I do not know who is the lucky one who is going to this feast. I wish all of us were going to this feast.

The Honourable Mr. Nurul Amin : What I was going to suggest is this. On Sunday next we have all got an engagement and it will not be a holiday. On that day we have got tougher meetings of the Assembly. As to the next Friday, that should be a holiday because next Sunday is a working day. We may be able to sit on Friday, the 13th October.

Mr. M. A. Khuhro : We should sit up to 8-30 P.M. on Friday.

Begum Jahan Ara Shah Nawaz : We are quite prepared to sit until midnight, if necessary. We should work as one works when one is serious to do something. In order to expedite the Constitution we should be able to put in as many hours of work as possible and finish this work.

Mr. M. A. Khuhro : We should sit even after dinner.

Mr. President : The house stands adjourned till 5 P.M. on Friday next.

The Assembly then adjourned till Five of the Clock, in the Evening, on Friday, the 6th October, 1950.